

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

RESERVED ON : 02.05.2017
DELIVERED ON : 03.05.2017

W.A.Nos.453, 484, 490, 491, 498, 499, 506, 527, 536
and 537 to 546 of 2017 and connected miscellaneous petitions

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN (THIRD JUDGE)

RESERVED ON : 05.05.2017
PRONOUNCED ON : 06.05.2017

1.DR.PREETHISWARY S
2.DR.THIRUNAVUKKARASU .P
3.DR.GOKUL R.
4.DR.ARUN P ... Appellant in WA.453 of 2017

1. THE SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
ST. GEORGE FORT CHENNAI 09.
2. THE DIRECTOR OF MEDICAL EDUCATION
THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI 10.
3. THE SELECTION COMMITTEE
THE DIRECTORATE OF MEDICAL EDUCATION
KILPAUK CHENNAI-10 ... Appellants in WA.484 of 2017

DR.C. SRINIVASACHOLAN ... Appellant in WA.490 of 2017

DR.P.PRAVIN ... Appellant in WA.491 of 2017

DR.SUBASHINI ... Appellant in WA.498 of 2017

DR.PRABHU ... Appellant in WA.499 of 2017

1. GOVINDARAJU
2. N.SURIYAPRAKASH
3. R.RAJVIJAY
4. P.PRADHAP
5. S.YOKESH
6. D.SURESH
7. S.SATHISH KUMAR
8. R.VIJAYRAJ

9. CHARLES SEKAR
10.G.ARULRAJA
11.L.ARULSELVAM
12.V.SOMASUNDARAM
13.S.SHREE BALAJI

... Appellants in WA.506 of 2017

1. G.KAMALESHWARAN
2. V.MOHAN RAJ
3. D.NAVEEN KUMAR
4. A.GOWTHAM SHANKAR
5. G.N.SUKUMAR
6. M.RAJMOHAN
7. S.DHANASEKAR
8. M.MOHAMMED SHAKEEL
9. R.RAVIKUMAR
10.T.SUGANATHAN
11.M.MANIVANNAN
12.S.RAJESH KUMAR

... Appellants in WA.527 of 2017

1. DR.C. SURESH BABU
2. DR.V. POONGUZHALI
3. DR.S. VADIVEL
4. DR.S. MURALI
5. DR.D. BHUVANESWARAN
6. DR.A. MARUDHAVANAN
7. DR.A. CHANDRAN
8. DR.P. RAMASAMY RAJA
9. DR.T. PRADEEP
10.DR.S. RAJAKUMAR
11.DR.R. SHOBIJA
12.DR.C. SUGANYA
13.DR.P. VANI PRIYA
14.DR.M. SATHISH KUMR
15.DR.AADARSH RAGHAVAN
16.DR.P. RAJASANKAR
17.DR.S. KALAI ARASI
18.DR.P. PRIYA
19.DR.HITEN D. SHAH
20.DR.A. RAJESH KUMAR
21.DR.M. VIJAYARAGAVAN
22.DR.M. ARUNKUMAR
23.DR.R.G. RAJASEKAR
24.DR.P. YUVASRI

... Appellants in WA.536 of 2017

DR.G.SARAVANAN

... Appellant in WA No.537 of 2017

DR.S.GOPI KUMAR

... Appellant in WA No.538 of 2017

DR.P.AISHWARYA

... Appellant in WA No.539 of 2017

DR. S. RANJITH PRATAB

... Appellant in WA No.540 of 2017

DR.ANAND K.R. ... Appellant in WA No.541 of 2017
DR.G. KESAVAN ... Appellant in WA No.542 of 2017
DR.KALPANA THILAGAM ... Appellant in WA No.543 of 2017
DR.P.EZHILAN ... Appellant in WA No.544 of 2017
DR.MURALI KRISHNA.G ... Appellant in WA No.545 of 2017
DR.J.CHRIS SHINY ... Appellant in WA No.546 of 2017

Vs.

DR.G.KAMALESHWARAN ... 1st RESPONDENT in WA.453 of 2017

THE PRINCIPAL SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
FORT ST GEORGE CHENNAI 600 009

... 2nd Respondent in WA.453 of 2017

THE DIRECTOR
DIRECTORATE OF MEDICAL EDUCATION
162 EVR PERIYAR SALAI
KILPAUK CHENNAI 600 010

... 3rd Respondent in WAs.453, 484, 490,
491, 498, 499, 506, 527, 537 to 546 of 2017

... 2nd Respondent in WA.536 of 2017

THE SECRETARY
SELECTION COMMITTEE
DIRECTORATE OF MEDICAL EDUCATION
162 EVR PERIYAR SALAI KILPAUK CHENNAI 600 010

... 4th Respondent in WAs.453, 484, 490,
491, 498, 499, 506, 527, 537 to 546 of 2017

... 3rd Respondent in WA.536 of 2017

THE SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
ST. GEORGE FORT CHENNAI.

... 1st Respondent in WA.536 of 2017
and 2 Respondent in WAs.490, 491, 498,
499, 506, 527, 537 to 546 of 2017

THE MEDICAL COUNCIL OF INDIA
REP BY ITS SECRETARY
POCKET 14 SECTOR 8
DWARKA PHASE I NEW DELHI.

... 2nd Respondent in WA.484 of 2017
... 4th Respondent in WA.536 of 2017 and
5th Respondent in WAs.490, 491, 498, 499,
506, 527, 537 to 546 of 2017

DR.RAJESH WILSON

... 1st RESPONDENT in WAs.484, 490, 491,
498, 499, 506, 527, 537 to 546 of 2017
and 5th Respondent in WA.536 of 2017

1. DR.P.ARUN KUMAR
2. P.RAY PELINE
3. DR.K.ARUN ALEX
4. DR.S.VIJAY
5. DR.D.C.JERALD BOSE
6. DR.A.ARIF
7. S.JEFFERSON ROY
8. D.DHIVYA SHARONA
9. DR.C.SUNDERAMOORTHY
- 10.DR.FLOVIN PETER
- 11.DR.M.R.VIVEK
- 12.DR.B.CHITHRA
- 13.DR.C.DEEPAN
- 14.DR.T.NAVIN FRANK
- 15.DR.S.MAHIZHSEN
- 16.DR.R.K.RENISH
- 17.DR.R.CHRISTOPHER JEBARAJ
- 18.DR.A.SANGEETHA

... Respondents 3 to 20 in WA.484 of 2017

(RR3 TO 20 IMPEACHED AS
PARTY RESPONDENTS VIDE ORDER OF
COURT DATED 02.05.2017 MADE IN
CMP.7461 of 2017 IN WA.484 of 2017)

Prayer : Writ Appeals preferred under the clause 15 of letters patent Act against the order dated 20.03.2017 and in WP.6094 of 2017 and dated 17.04.2017 in WP.6031 of 2017.

These Writ Petitions are filed under Article 226 of the Constitution of India (i) to issue a writ of certiorari mandamus calling for the records relating to the impugned G.O.Ms. No.29 dated 8.2.2017 issued by the 1st respondent authorities and quash the same as illegal and unconstitutional and consequently direct the respondent authorities to publish to merit/rank list for admission into Post Graduate Medical courses 2017-18 as per the already existing notification of rural/hilly/remote and difficult area primary health centres and hospitals published by the respondents as annexure to the prospectus as upto the academic year 2016-17 (WP.No.6094/2017)

ii) to issue a writ of mandamus directing the 2nd and 3rd respondents to implement the Regulation 9 of Post Graduate Medical Education 2000 as amended by adding 30% mark on the mark secured by the petitioner in the NEET Examination while

preparing the rank list for admission to Post Graduate Course in 50% reserved category for Government Servants for the academic year 2017-18 by passing orders on the representation dated 24.2.2017. (WP.No.6031/2017)

Mr.Manishankar,
Additional Advocate General
Assisted by Mr.T.N.Rajagopalan, ... For State Government
Special Government Pleader in all Writ Appeals.

Mr.P.Wilson, Senior counsel,
for M/s.K.P.Narayanan ... Appellant in W.As.498 & 499
of 2017 and 537 to 546 of 2017

Mrs.G.Thilagavathy
for M/s.K.V.Sanjeev Kumar ... Appellant in W.A.506 of 2017
and Mrs.Bhavani Subbaroyan ... Appellant in W.A.527 of 2017

Mr.L.Chandrakumar ... Appellant in W.A.536 of 2017

Mr.G.Sankaran ... Appellant in W.A.490 of 2017

Mr.Vijay Narayan, Senior counsel
for Mr.V.P.Raman ... Medical Council of India
in all Writ Appeals

Mr.G.Justin ... 1st Respondent in all W.As.
Except W.A.536 of 2017 &
for R5 in W.A.536 of 2017

Mr.P.Godson Swaminath ... For R3 to R20 in
W.A.484 of 2017

Mr.N.Surya Senthil ... Appellant in W.A.453 of 2017

Mr.R.N.Amarnath ... Appellant in W.A.491 of 2017

COMMON JUDGMENT

K.K.SASIDHARAN, J.

Introduction:-

(a) The Hon'ble Supreme Court, taking into account the factual position that provision in the form of grant of weightage marks was introduced to give incentive to the in-service candidates and to attract more graduates to join as medical officers, in the health sector and more particularly in rural areas and that such incentives is just, proper and reasonable and fulfills the test of Article 14 of the

Constitution being in larger public interest, made the following observation relating to service in remote and difficult areas, on 16 August 2016, in State of Uttar Pradesh and others vs. Dinesh Singh Chauhan (2016 (9) SCC 749) :

"To determine the academic merit of candidates, merely securing high marks in NEET is not enough. The academic merit of the candidate must also reckon the services rendered for the common or public good. Having served in rural and difficult areas of the State for one year or above, the incumbent having sacrificed his career by rendering services for providing health care facilities in rural areas, deserve incentive marks to be reckoned for determining merits".
(emphasis supplied)

(b) The methodology adopted by the State for reckoning the services rendered by the Doctors in the remote and different areas for awarding incentive marks is the subject matter of this litigation.

The core issue :-

2. Whether the State Government has the authority to issue any executive order identifying the remote and difficult areas for the purpose of granting weightage by incentive marks for admission to Post Graduate Courses and fixing marks for service in the Government hospitals in such areas, notwithstanding the post graduate Medical Regulations, 2000, issued by the Medical Council of India (hereinafter referred to as MCI), indicating a different methodology for award of incentive marks by weightage is the core issue that arises for determination in these batch of Writ Petitions, posted before us during summer vacation, pursuant to the request made by all the parties, in view of the deadline fixed for completion of selection process for admission to "Post Graduate Course, for the academic year 2017-18".

3. Background of the litigation :-

(a) The First respondent in the intra court appeals in W.A.No.484 of 2017 etc. batch filed a Writ Petition in W.P.No.6031 of 2017 for issuance of a Writ of Mandamus to the Director of medical Education and Selection Committee constituted for admission to the Post Graduate Courses, to implement Regulation 9(IV) of the Post Graduate Medical Education Regulations, 2000 (hereinafter referred to as P.G. Regulations) by adding weightage marks for his medical service in a hilly area, with the marks obtained in National Eligibility cum Entrance Test, (NEET), for admission to Post Graduate Course against the 50% reserved category for in-service candidates for the academic year 2017-18.

(b) The first respondent in the intra court appeal in W.A.No.453 of 2017 filed W.P.No.6094 of 2017, challenging the Government Order in G.O.Ms.No.29 dated 8 February 2017 issued by the Government of Tamil Nadu adding more areas to the list of backward, rural, hilly and remote areas and the grant of weightage marks to the medical officers, working in those areas for admission to the Post Graduate Course for the academic year 2017-18. Before the writ Court, the Secretary to Government, made a written assurance that weightage marks would be awarded taking into account the areas declared in the prospectus for the year 2016-17 and that the Government Order in G.O.Ms.No.29 dated 8 February 2017 would be kept in abeyance. The learned Single Judge recorded the said submission and disposed of the Writ Petition in W.P.No.6094 of 2017 along with 14 other Writ Petitions. The order dated 20 March 2017 in W.P.No.6094 of 2017 is challenged in W.A.No.453 of 2017.

(c) The learned Single Judge allowed the Writ Petition in W.P.No.6031 of 2017 holding that the State cannot make any law in conflict with the regulations framed by M.C.I. The learned Judge observed that the Post Graduate Regulations would hold good for the Post Graduate Admission 2017-18 and weightage marks should be given in accordance with the proviso to regulation 9 (iv) and not in the light of the methodology indicated in the prospectus issued by the Directorate of Medical Education for the year 2017-18. The learned Judge made it clear that Regulation 9 is the only effective and permissible basis for granting admission to in-service candidates. The learned Judge directed the Selection Committee to award 30% marks to the Writ Petitioner by way of weightage.

4. Summary of submissions:-

(a) The learned Additional Advocate General appearing on behalf of the appellants in W.A.No.453 of 2017 contended that there is no conflict between the Post Graduate Regulations framed by the MCI and the method adopted by the State Government for the grant of incentive marks. According to the learned Additional Advocate General, the Government of Tamil Nadu has been giving incentive marks for in-service candidates taking into account their rural service at least from the year 1992. The system worked well all these years. According to the learned Additional Advocate General, the first respondent in the appeal failed to challenge the prospectus issued by the Government. The learned Single Judge, notwithstanding the fact that there was no challenge to the prospectus in the writ petition made sweeping observations about the validity of the prospectus. The learned Additional Advocate General further contended that in spite of the fact that the first respondent is not entitled for incentive marks in accordance with the Regulations issued by the MCI or the State, still, a mandamus was issued to award him weightage marks. The learned Additional Advocate General placed reliance on the judgment of the Constitutional Bench in Modern Dental

College and Research Centre and others v. State of Madhya Pradesh and others [(2016) 7 SCC 353] and contended that the scope of Entry 66 must be construed limited to its actual sense of "determining the standards of higher education" and not of laying down admission process.

(b) The learned Senior Counsel for the appellants in W.A.Nos.498 and 499 of 2017 took us through the prospectus, the judgment in Modern Dental College and Research Centre (cited supra) and a Full Bench decision in Dr.Murari vs. Dr.R.Kamalakaran, (1999 (3) CTC 675), and contended that since there was no challenge to the prospectus, the learned Single Judge ought to have dismissed the writ petition. The learned Senior Counsel contended that the Doctors were given a promise that they would be given incentive marks and as such, the State is bound to adhere to its promise, as otherwise, it would be a violation of the principle of legitimate expectation. The learned Senior Counsel further contended that the State is well within its powers under Entry 25 List III to evolve a method for awarding incentive marks. It was contended that the Proviso to Regulation 9 (iv) is illustrative and not exhaustive and as such, it has to be read harmoniously with the method adopted by the State for giving weightage marks.

(c) The learned counsel for the appellant in W.A.No.490 of 2017 contended that the learned Single Judge failed to take into account Section 10(D) of the Indian Medical Council Act, which was enacted after reviewing the judgment reported in 2014 (2) SCC 305.

(d) The learned counsel for the appellant in W.A.No.536 of 2017 contended that the State has not violated the MCI Regulation, by adopting the method for giving weightage marks. According to the learned counsel, 90% of the weightage marks would cover the marks obtained in NEET and as such, the norms adopted by the State is not violative of the MCI Regulations.

(e) The learned Senior Counsel for the appellant in W.A.No.527 of 2017 contended that the State was perfectly correct in fixing the incentive marks. According to the learned Senior Counsel, benefit should be given to all the candidates, taking into their service in the rural areas and it should not be limited to the remote and difficult areas indicated in the MCI Regulations.

(f) The learned counsel for the appellant in W.A.No.491 of 2017 adopted the arguments of the appellants in W.A.Nos.498 and 499 of 2017.

(g) The learned Senior Counsel for MCI contended that the prescription in the prospectus issued by the State giving reservation to in-service candidates is in violation of the MCI

Regulations prescribing reservation only for the Diploma Course. The learned Senior Counsel contended that the Supreme Court time and again held that the MCI is the only authority to frame Regulations and norms in the field of Medical Education. The learned Senior Counsel submitted that Government of Tamil Nadu issued the prospectus in question in total violation of the Medical Council of India norms and as such, those clauses are all liable to be set aside. The learned Senior Counsel further contended that the prospectus proceeds as if one mark would be given to the service as well as non-service candidates, which is not contemplated in the Regulation framed by the MCI. The learned Senior Counsel contended that the prospectus to the extent it violated the norms prescribed by the MCI is liable to be quashed.

(h) The learned counsel for the impleaded parties in W.A.No.484 of 2017 adopted the arguments advanced on behalf of the Medical Council of India. According to the learned counsel, the State erred in framing a policy in total violation of the Regulations framed by the Medical Council of India.

(i) The learned counsel for the first respondent in W.A.No.484 of 2017 contended that there is no need to challenge the prospectus in view of the settled legal position that the State Government is not given power to evolve a method for awarding incentive marks, in case, there is a Regulation issued by the MCI for the very same purpose. The learned counsel contended that the first respondent in the respective writ petitions filed the writ petition in W.P.No.6031 of 2017 as he is entitled to 30% marks on account of his service in a hilly area. The learned counsel justified the direction given by the learned single Judge.

(j) The learned counsel for the appellant in W.A.No.453 of 2017 contended that the Government was not correct in keeping the Government Order in G.O.Ms.No.29 dated 8 February, 2017 in abeyance. The learned counsel contended that the appellants are also entitled to claim incentive marks in view of the Government Order in G.O.Ms.No.29. Since the Government Order is now kept in abeyance, the appellants are denied of an opportunity to take part in the selection process for admission to the Post Graduate medical course in the notified category.

5. The individual issues :-

1. Whether the Writ Petition filed by the first respondent in W.A.No.498 of 2017 and other connected Writ appeals is maintainable without challenging the Government regulation awarding incentive marks as indicated in the prospectus for 2017-18;
2. Whether the method evolved by the State Government for giving weightage for service in remote and difficult areas by way of incentive marks is in conflict with the method

prescribed by the Medical Council of India in the Post Graduate Admission Regulations, 2000.

6. Resolution of issues:-

The State is enjoined to take steps for the welfare of its people taking into account the constitutional mandate. The state is expected to provide medical facilities to the poor and downtrodden people, living in hilly, tribal, backward, remote, rural and difficult areas. The right to live a healthy life is now elevated to a right guaranteed under Article 21 of the Constitution of India. The medical officers appointed by the State in its medical service were reluctant to go to the villages and more particularly in tribal and hilly areas for rendering medical service. In cities, better work environment and facilities are available and this luxury culture prompted many a medical professionals to settle down in municipal areas and metropolitan cities. This situation made the Central Government and States to evolve a method to attract talents to the rural India. The Government both at the Centre and States felt that grant of weightage marks for discharging medical service in rural, backward, hilly and tribal areas would enable the medical professionals, gain experience and better opportunity to secure admission for post graduate course. The decision to grant incentive marks for rural service was the result of such serious thinking.

7. The Hon'ble Supreme Court in Snehelata patnaik vs. State of Orissa, 1992(2) SCC 26, suggested the States to consider giving weightage up to a maximum of 5% in favour of in-service candidates who have done rural service for five years or more.

8. The State of Tamil Nadu has been the pioneer in identifying the rural, hilly and difficult areas and giving incentive for service in the primary health centres and hospitals in such areas. The State Government from time to time took policy decisions to award weightage marks as an incentive for rural practice, so as to encourage the medical professionals to join the posts and thereafter to secure admission in Post Graduate Course by making use of the weightage marks.

9. The Government of Tamil Nadu has been issuing orders giving incentive marks every year since 1992. Subsequently, in the year 2007, the Government has issued a comprehensive order in G.O.Ms.No.456 Health and Family Welfare Department, dated 19 December 2007, indicating the Government Policy for admission to Post Graduate Medical and Allied Courses. As per the Government Order, merit list would be drawn for a total mark of 100 by computing the entrance examination marks viz., 90 marks and adding 10 marks for experience. The Government Order shows that Two marks for each year of Government service in hilly areas to a maximum of five years, restricting to a total of 10 marks would be given to encourage service in hilly areas.

10. The Government as per the order in G.O.Ms.No.332 dated 24 December 2010, provided for awarding 2 marks for each year of Government service to the Doctors, who works in the Government Hospitals, Government Primary Health Centres and Government Medical Centres at Nagapattinam, Tiruvarur and Ramanathapuram District, subject to a maximum of 10 marks.

11. The Director of Medical Education appears to have recommended to the State Government to take a decision for awarding two marks in each year of Government service to the doctors who work in the newly started medical colleges, during its initial years of establishment in order to improve the faculty strength and motivate the doctors working in the newly established colleges, except the medical college at Chennai.

12. The Ministry of Health and Family Welfare Services, Government of India, vide letter dated 8 December 2014, requested the State Government to identify, demarcate and notify areas into urban, rural, difficult and remote in the State of Tamil Nadu, to provide better health care facilities.

13. The Government of Tamil Nadu taking into account the need to provide incentive to doctors, opting for rural service and in response to the request made by the Government of India, issued an order in G.O.Ms.No.29, Health and Family Welfare Department, dated 8 February 2017, notifying the rural, hilly, remote and difficult areas for awarding bonus marks to service candidates.

14. In the meantime, Medical Council of India issued a notification amending Clause 9 of the Post Graduate Medical Education Regulation, 2000. The MCI added a proviso to Sub Clause IV of Clause 9, and issued the notification dated 15 February 2012. It reads thus:-

Provided that in determining the merit of candidates who are in service of Government/ public authority, weightage in the marks may be given by the Government/ Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and /or difficult areas up to the maximum of 30% of the marks obtained in National Eligibility cum Entrance Test. The remote and difficult areas shall be as defined by State Government/ Competent Authority from time to time.

15. It is the admitted case of the parties that even after the introduction of the proviso to sub clause IV of Clause 9, incentive marks were given to the inservice candidates in the

State of Tamil Nadu in accordance with the earlier Government Orders and the last Government Order in G.O.Ms.No.332 dated 24 December 2010. The system worked very well without any complaint from the applicants for admission to the Post Graduate courses.

The First Issue - Maintainability of Writ Petition

16. There was no challenge to the method adopted by the State Government for giving weightage by incentive marks for remote and difficult area service. The Government Policy is reflected in the prospectus issued by the Directorate of Medical Education. The first respondent in W.A.No.498/2017 filed only a writ of mandamus to direct the Selection Committee to award him marks in accordance with the Post Graduate Admission Regulation 2000 issued by MCI. The first respondent, who filed the writ petition was well aware that there was a method evolved by the State for awarding weightage marks which was in operation all these years and the same was reflected in the Prospectus for 2017-18 also. He failed to challenge the vires of the State Regulation prescribing a method different from the method prescribed by MCI, for awarding incentive marks. The Selection Committee constituted by the Government is only an implementing agency of the policy adopted by the State. There was no legal right to the first respondent in W.A.No.498/2017 to direct the Selection Committee to award marks in accordance with MCI Regulations without challenging the method adopted by the State. Similarly, there was no corresponding duty on the part of the Selection Committee to follow the method suggested by MCI in view of the method adopted by the State. The mandatory condition for issuing a writ of Mandamus, was not satisfied by the first respondent in the writ appeal in W.A.No.498 of 2017. This fundamental defect was not taken note of by the learned single Judge. The learned single Judge without there being a challenge to the method evolved by the State by adopting a policy, issued a mandamus to the Selection Committee to follow the method prescribed under the MCI Regulations. It is a matter of record that even while issuing the writ to award marks as per MCI Norms, the learned single Judge has not quashed the State norms for awarding incentive marks. We are therefore of the view that the learned single Judge ought to have dismissed the writ petition filed for a Writ of Mandamus without there being a challenge to the policy adopted by the State and indicated in the prospectus. The first issue is therefore decided against the first respondent in the intra court appeals.

17. Even after holding that the writ petition filed by the first respondent in W.A.No.498 of 2017 is legally not maintainable, we are constrained to deal with the merits of the matter in view of the cut-off date prescribed for completing the admission process and to give a quietus to the issue raised in the matter.

Second issue :-

Whether State Regulation is violative of MCI Norms:-

18. The Director of Medical Education, issued the prospectus for the year 2017-18, indicating the methodology for the award of incentive marks for in-service candidates. The prospectus was in the same line, as issued in all these years.

19. The learned Single Judge placed reliance on the judgment in State of Uttar Pradesh vs. Dinesh Singh Chauhan, 2016(9) SCC 749, and issued a Writ of Mandamus.

20. (a) In Dinesh Singh Chauhan, two issues were raised before the Hon'ble Supreme Court. The first issue was regarding the authority of the State to frame rules or to issue executive order to provide for reservation in Post Graduate Degree courses, contrary to the statutory regulation framed by the MCI. The other issue was whether the proviso to sub clause IV of Clause 9 would operate as a reservation in favour of in-service candidates.

(b) The Hon'ble Supreme Court held that providing 30% representation to in-service candidates in Post Graduate Degree Course is not permissible

(c) The third proviso inserted to the Regulation 9(iv) which envisages that in determining the merit, weightage may be given at 10% marks obtained for each year in service in remote or difficult areas, up to the maximum of 30% marks obtained in the common examination by the candidates was upheld. The Supreme Court observed that the said regulation does not envisage reservation of seats for the post graduate courses, unlike the express provision, which is made in the same regulation to provide reservation of seats for in-service candidates in "Diploma Course".

21. The issue raised before us regarding the methodology adopted by the State in the matter of awarding incentive marks was not an issue in Dinesh Singh Chauhan.

22. Since the methodology adopted by the State for giving weightage in the form of incentive marks vis-a-viz the proviso to sub Clause IV of Clause 9 was not an issue earlier, we are inclined to consider as to whether the method prescribed by the State would run counter to the norms evolved by the Medical Council of India.

23. The Hon'ble Supreme Court in Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and ors., 2016(7) SCC 353, considered the scope of State legislation to deal with the subject of admission in professional educational institutions. The Hon'ble Supreme Court on a comparison of list

I entry 66 and List III Entry 25, observed that State legislatures are given powers in other facets of education including medical education, notwithstanding the power given to the Central Government under List I, Entry 66 to lay down a uniform method of minimum standards of education for the nation. The Supreme Court further observed that field covered by List III Entry 25 is wide enough and as circumscribed to the limited extent of it being subject to List I, entries 63, 64, 65 and 66.

24. The Hon'ble Supreme Court in *State of Tamil Nadu vs. Adhiyaman Educational and Search Institute* 1995(4) SCC 104, held that, "whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

25. There is no dispute that norms of admission have a bearing on the standard of education. This was indicated by the Hon'ble Supreme Court in *Preeti Srivatsava vs. State of Madhya Pradesh*, (1999(7) SCC 120). Therefore, the question is whether the method evolved by the State would amount to lowering the set of norms laid down by the Medical Council of India.

26. In *Modern School* (supra), Banumathi, J., in her Lordship's concurring judgment, made it clear that scope of Entry 66 must be construed limited to its actual sense of it "determining the standards of higher education" and not laying down admission process. (emphasis supplied). It was further observed that in no case is the State denuded of its power to legislate under List III Entry 25 and more so, pertaining to the admission process in universities imparting higher education. The following observation indicates the beneficial role to be played by the State in the process of admission.

"I have no hesitation in upholding the vires of the impugned legislation which empowers the state government to regulate admission process in institutions imparting higher education within the state. In fact, the State being responsible for welfare and development of the people of the State, ought to take necessary steps for welfare of its student community. The field of 'higher education' being one such field which directly affects the growth and development of the state, it becomes prerogative of the State to take such steps which further the welfare of the people and in particular pursuing higher education. In fact, the State Government should be the sole entity to lay down the procedure for admission and

fee etc. governing the institutions running in that particular state except the centrally funded institutions like IIT, NIT etc. because no one can be a better judge of the requirements and inequalities-in-opportunity of the people of a particular state than that state itself. Only the State legislation can create equal level playing field for the students who are coming out from the State Board and other streams."

27. The Post Graduate Medical Regulation 2000 provides for reservation of seats in medical colleges for reserved categories as per the applicable laws prevailing in the States or Union Territories. This reservation as observed by the Supreme Court in *Dinesh Singh Chauhan* is obviously with reference to reservation as per the constitutional scheme for the Scheduled caste and Schedule tribe or other backward class communities. The Proviso appended by amendment in 2012, after Clause 9 (iv) is to identify the remote and difficult area for giving weightage as an incentive. The State is given the task of locating and notifying the remote and difficult areas for giving incentive marks for admission to Post Graduate Courses.

28. The Proviso was inserted by MCI by Notification dated 15 February, 2012. Thereafter, the Ministry of Health and Family Welfare, Government of India by letter dated 10 March, 2015 made a request to the State of Tamil Nadu to identify and notify areas into Urban, Rural, difficult and remote in the State. Accordingly, the Government identified areas and published a notification.

29. The Central Government adopted measures to make up the extreme shortage of qualified and skilled Doctors for health care in rural areas. The award of incentive marks at the rate of 10% each year in service in remote and difficult areas upto the maximum of 30% of the marks obtained in the NEET was the method introduced by MCI to address the issue. The State of Tamilnadu on the other hand has been giving weightage in the form of incentive marks by adopting another method for the past more than 25 years. The State of Tamilnadu and State of Odisha, were instrumental in introducing such incentive scheme in larger public interest. There was a reference about this in the judgment of the Hon'ble Supreme Court in *Satyabrata Sahoo v. State of Orissa* (supra).

30. The State Government evolved a method for the grant of incentive marks for Post Graduate admission by drawing a merit list for a total marks of 100, by computing the NEET PG 2017 marks and 10 marks for experience. The NEET marks and experience marks would be taken in the ratio of 90 : 10.

31. It was only to award incentive marks for all the Doctors who have served in notified areas and to give weightage to their experience, the State prescribed the method by allotting 10% marks maximum by way of service incentive. In case the NEET mark alone is taken as the basis to award weightage by giving incentive marks, such method would not reckon the services rendered for the common public good. The Government order fixing the norms for awarding incentive marks should be tested on the touchstone of remote and difficult area service.

32. The method indicated in the proviso to Sub-Clause (iv) of Clause 9 relates to remote and or difficult areas. The State is empowered by the MCI to define the remote and difficult areas. The State Regulation gives benefits to the Doctors working in urban, hilly and some of the newly started medical colleges in backward areas. The MCI Regulation would benefit only those who secured more marks in NEET as their marks would be shooted by 30%. To illustrate this, the first respondent in W.A.No.498 of 2017 who was the petitioner in W.P.No.6031 of 2017 completed three years of rural service. He secured 874.5825/1500 in NEET. He is entitled as per MCI Regulation 30% incentive marks. His marks therefore would be 1136.95725/1500. However, that would not be the case of another candidate who is posted in a very remote area with little resources and a difficult environment for making preparation for NEET. The benefit should not be denied on account of service in an area, where there are no facilities for studies after completing the treatment of poor people. There are committed medical graduates now, who are willing to serve the poor residing in remote and difficult areas without even the luxury of electricity. Such Doctors should also be encouraged to take Post Graduation, as they would come back to our villages and difficult/remote areas for service to the poor and downtrodden. The award of incentive marks for experience by serving the difficult and remote areas would serve larger public interest.

33. While considering the Regulation awarding weightage by incentive marks the object sought to be achieved must also be taken note of. The intention in giving incentive marks for remote and difficult area service is to encourage those who have opted to serve poor, living in such areas.

34. Both the MCI Regulations and the method prescribed by the State aimed to give incentive to the Doctors who have opted to serve the remote and difficult areas for admission to Post Graduate Courses. The State norms evolved for giving weightage for practical experience in notified remote and difficult areas would not prejudicially affect the coordination or determination of standards prescribed by MCI.

35. The State taking into account remote regions and difficult areas, provided incentives to Doctors to serve the

poor people in such areas. Similarly, the attempt of MCI by introducing the Proviso was also to encourage service in remote and difficult areas. The State norms does not envisage reservation of seats for PG Courses. It was only a weightage by giving incentive marks calculated by adopting a method. There was no violation of standards set by the MCI while giving weightage marks by the State. This time tested procedure recognizing service to the poor would not violate the norms prescribed by MCI.

36. The MCI Regulations provide for 30% of the NEET marks as weightage by way of incentive marks. The state norms restricts the weightage marks at 10%. There is no dilution of the standards set by MCI by taking 90% marks secured by the candidate in NEET and 10% for rural service, calculated in the manner indicated in the prospectus. These two regulations have to be construed harmoniously to achieve the common object of encouraging service in remote and difficult areas and to award incentive marks for such service.

37. The Hon'ble Supreme Court in *State of Tamil nadu v. Pradeep* (2004) 4 SCC 513 indicated that Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission.

38. We are informed by the learned Additional Advocate General that there is a condition prescribed by the State that after completion of their Post Graduation, those doctors have to serve the Government till superannuation.

39. The following observation made by the Supreme Court in *Dinesh Singh Chauhan* is relevant here:

"Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst the young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates) is permissible differentiation whilst determining their merit. It is an objective method of determining their merit".

40. The decision taken by the Medical Council of India and the State to award incentive marks was with a definite purpose to encourage remote and difficult area service. The benefit of such policy taken in larger public interest must go to all the Doctors, who have opted for such Service. The State has given an assurance that weightage marks would be given in case of taking rural practice. The Doctors, acting on such promise, agreed to practice in the notified areas with the hope that they would be

in a position to secure admission for Post Graduate courses. Since the State has been following this system of awarding incentive marks for many years, the Doctors have no reason to think twice before opting rural service. These doctors have to serve the period prescribed by the State for service in remote and other areas for admission to the Post Graduate course. The State continued to follow the Policy (adopted even before the introduction of the Proviso to Regulation 9(iv) to award incentive marks), notwithstanding the MCI Regulations providing for a different method of assessment of incentive marks.

41. The writ petitioner would be justified in his contention that the State Regulation is in conflict with the MCI Regulations, only in case the State is adopting a Policy of Reservation in favour of Doctors working in remote and difficult areas. The MCI and the State are committed to promote rural service. The method of awarding incentive marks alone is different. The State seeks to benefit all the Doctors, who have opted for difficult and remote area service. The intention of the MCI in framing the Regulation is also the same. The State clearly demonstrated that the method adopted all these years would benefit all the Doctors working in the notified areas and there would not be any kind of undue advantage to a section of Doctors. There is absolutely no conflict between the Central Regulation and the State Policy on account of different criteria followed for awarding incentive marks. The method evolved by the State would therefore meet the Equality Test under Article 14 of the Constitution of India. The second issue is therefore answered by upholding the method adopted by the State.

Reservation in favour of service candidates:-

42 (a) There was no challenge in W.P.No.6031 of 2017 to the prospectus issued by the admission committee constituted by the Government of Tamil nadu. The learned Senior Counsel for the MCI pointed out several clauses in the Prospectus to demonstrate that all those provisions would go counter to the norms prescribed by the MCI. According to the learned Senior Counsel award of one mark for each completed year after the completion of CRRI for experience, for both service and non-service candidates has no legal sanction. The learned Senior Counsel further pointed out that the Government has provided 50% seats in each Specialty and each college for service candidates in addition to those serving candidates selected in the open category. The learned Senior Counsel submitted that such reservation is not permissible except for the Diploma Course.

(b) There is no proper writ petition before us to consider the legality and correctness of the prospectus issued by the State of Tamil Nadu. The challenge before us is only to the method adopted by the State Government for awarding incentive marks. The question as to whether the State was correct in reserving 50% of the seats in each speciality and in each

college for service candidates requires to be decided in an appropriate proceedings with opportunity to the parties to file counter affidavit. The validity of the prospectus was not at all in issue in W.P.No.6031 of 2017 in respect of which, the present writ appeals are filed.

(c) The Court is not expected to travel beyond the scope of the Writ Petition. The Court should confine its decisions to the matter in issue. There is no challenge before us to the various clauses in the prospectus issued by the State. This Bench is constituted only to decide the intra court appeals preferred against the order in W.P.No.6031 of 2017 and W.P.No.6094 of 2017. In both the cases, the reservation in favour of in-service candidates or the award of one mark for each completed year after the completion of CRRI for experience for both the service and non service candidates were not raised by the parties. In fact, the Writ Petition in W.P.No.6094 of 2017 deals only with identification of remote areas. There was no adjudication on merits in the said Writ Petition, on account of subsequent events. In the Writ Petition in W.P.No.6031 of 2017, the learned Single Judge has not dealt with any other issues, as there was no challenge to the prospectus. It was a simple Writ Petition for Mandamus. Therefore, it is not permissible to expand the scope of the related appeals and test the validity of all the clauses in the prospectus. We are therefore of the view that there is no need to consider the legality and correctness of the prospectus fixing 50% each for the in-service candidates and the award of uniform marks for both service and non-service candidates for experience, in the present batch of intra court appeals.

W.A.No.498/2017 :-

43 (a) The challenge in the writ petition in W.P.No.6094 of 2017, which is the subject matter in W.A.No.453 of 2017 is to the Government Order in G.O.(Ms).No.29 Health and Family Welfare Department, dated 8 February, 2017, adding additional areas for the purpose of awarding weightage marks. Before the Writ Court, the Secretary to Government, Health Department, filed an affidavit indicating that the Government has taken a decision to keep the said Government Order in abeyance. The learned Single Judge, therefore, disposed of the writ petition without considering the merits of the matter. Subsequently, the Government issued another order stating that the Government Order in G.O.Ms.No.29 dated 8 February, 2017 is kept in abeyance.

(b) There is no challenge to the subsequent Government Order issued by the Government of Tamil Nadu keeping G.O.Ms.No.29 dated 8 February 2017 in abeyance. The learned single Judge was therefore perfectly correct in disposing of the writ petition in view of the decision taken by the Government not to implement the Government Order. We are therefore of the view that the appellant has not made out a case for interfering with the order

passed by the learned single Judge. We therefore confirm the order passed by the learned Single Judge in W.P.No.6094 of 2017.

Conclusion :-

44. In view of the reasons aforesaid, we hold that the methodology adopted by the State for giving weightage marks for in-service candidates is not in conflict with the method evolved by MCI.

45. In the absence of specific challenge, and 7 May 2017 being the cut off date prescribed by the Hon'ble Supreme Court for counselling, the questions regarding reservation for in-service candidates and award of incentive marks for experience for both the service and non service candidates are kept open to be decided in appropriate proceedings.

46. The order passed by the learned Single Judge dated 17 April 2017 in W.P.No.6031 of 2017 is set aside. We mould the relief by directing the Selection Committee, Directorate of Medical Education to consider the case of the petitioner in W.P.No.6031 of 2017 for awarding weightage marks in accordance with the method indicated in the prospectus for the year 2017-18.

Disposition :-

47. The writ appeals in W.A.Nos.484/2017, 490/2017, 491/2017, 498/2017, 499/2017, 506/2017, 527/2017, 536 of 2017, 537 to 546 of 2017 are allowed as indicated above. The writ appeal in W.A.No.453 of 2017 is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

(K.K.SASIDHARAN, J.) (S.M.SUBRAMANIAM, J.)

03.05.2017

सत्यमेव जयते
C O M M O N J U D G M E N T

S.M.SUBRAMANIAM, J.

My esteemed learned brother the Hon'ble Mr.Justice K.K.Sasidharan, circulated the 'draft Judgment' and I had the benefit of going through the same. I respectfully disagree with the views and the conclusions arrived therein by my esteemed learned Brother Judge and accordingly, I proceed with my dissenting Judgment as under:

2.The broad spectrum of principles to be borne in mind, while travelling with the entire case on hand are that :-

(a) Uniform standard of higher education, in the

whole of Union of India, particularly Post Graduate Courses in Medical Education;

(b) Inconsistencies if any, between the Central Government Regulations and State Prospectus, barring the Rules of Reservations and other permissible incentives granted by the MCA; and

(c) Importance of Post Graduate Medical Courses and its dilution will have a long-lasting adverse effects in the quality of medical education and treatments for general public and teaching sectors in Medical Colleges.

3. These batch of Writ Appeals have been filed under clause 15 of the letters patent preferred against the order of Learned Single Judge passed in W.P. No. 6031 of 2017 on 17th April 2017. The order cited supra is challenged by other Writ Appellants on the ground that the proposition laid down by the learned Single Judge is impacting the admissions to post graduate medical degree courses for the academic year 2017-2018. Hence all the writ appeals are taken together for consideration, in view of the constitution of a Special Division Bench, during Summer Holidays, as per the orders of My Lord The Hon'ble Chief Justice of the Madras High Court.

4. The writ petitioner in W.P. No. 6031 of 2017, filed the writ petition for issuance of a writ of mandamus to direct the Director of Medical Education of the State of Tamil Nadu and the Selection Committee, to implement the Regulation 9(IV) of Post Graduate Medical Education Regulations, 2000, as amended, by adding 30% marks secured by the petitioner in the "NEET" Examination, while preparing merit list for admission to Post Graduate Medical Course in 50% reserved for Government in-service candidates for the academic year 2017-18.

5. The factual matrix require to be considered in these Writ Appeals are that the candidates after completion of MBBS Degree were recruited to State Government service through Medical Recruitment Board Examinations. The 1st respondent in Writ Appeal No. 484 of 2017 was appointed in the Government service on 19.09.2017 through Medical Recruitment Board Examinations and was posted to serve as Assistant Professor, Civil Surgeon, Government Hospital, Sholaiya Nagar. Further, he has completed three years of service in the notified areas such as Tribal, remote and hilly areas. The 1st respondent appeared in the 'NEET' Examination for admission to Post Graduate Medical Courses for the academic year 2017-18 and secured 874.5825 marks and his All India rank was 26525.

6. The 1st respondent/writ petitioner further pleaded that pursuant to Medical Council of India Regulation No. 9(IV), he is entitled for 10% of marks to be added along with the marks obtained in NEET Examination for his completed services, and

the 1st respondent has completed three years of service in the notified areas such as Tribal, remote and hilly areas. Accordingly, he is eligible for adding of 30% marks obtained to be added with his NEET Marks.

7.The Writ Petitioner has secured 874.5825 marks out of 1500 and in the event of adding 30% marks, his total marks comes to 136.95725. Thus, according to the writ petitioner, his name has to be included in the rank list. The 1st respondent made a representation to the Director on 23rd February, 2017, with a request to comply Regulation 9(IV) of Medical Education Regulations, 2000, as amended. But, his representation was not even looked into. Under these circumstances, he moved this Court under Article 226 of Constitution of India seeking for issuance of a Writ of Mandamus for implementation of Regulation 9(IV) of Post Graduate Medical Education Regulations, 2000.

8.The learned Single Judge has considered the Regulations issued by the Medical Council of India and the Judgment of the Hon'ble Supreme Court of India and directed the State Government to follow the Regulation 9(IV) of Post Graduate Medical Education Regulations, 2000, by adding 30% on the marks secured by the 1st respondent/writ petitioner in the NEET Examination, while preparing the rank list for admission for the Pst Graduate Medical Courses for the academic year 2017-18, as Regulation 9, is only effective and permissible for granting admission to the in-service candidates. It was further made clear that the admission ought to be made only on the basis of the above provision.

9.This direction of the learned Single Judge gave raise for filing of these batch of Writ Appeals by many third party candidates appeared in the NEET Examination for the academic year 2017-18. All those Writ Appeals were filed challenging the order of the learned Single Judge and the important points to be formulated in these Writ Appeals are as under:

1. Whether in the absence of challenging the prospectus by the 1st respondent /writ petitioner, the relief granted is permissible are not ?

2. Whether in the absence of impleading the necessary parties viz., National Board of Examination, non-service candidates and other candidates appeared in the NEET Exam, such a relief granted was in accordance with law or not ?

3.Whether the candidates participated in the NEET Examination, accepting the prospectus can seek any relief from the Court contrary to the prospectus ?

4. When the MCI Regulations 9(iv), does not provide any incentive for the in-service candidates working in hilly areas, whether the State Government is right in granting the same ?

5. Whether the appellants in these batch of writ appeals having executed the bond and joined the Government service based on the promise of the State Government that incentive marks will be granted and such promise creates a legitimate expectation or not ?

6. Whether the State Government has got powers to regulate the scheme of admission in contravention with the scheme formulated under the MCI Regulation, 2000.

These grounds were raised by the Writ Appellants in these batch of Writ Appeals. Consolidating all these grounds, this Court considered the legal principles laid down by the Hon'ble Supreme Court of India in this respect, more specifically, on the MCI Regulations, 2000.

10. Before looking into the various aspects involved and the contradictions pointed out in the prospectus issued by the Government of Tamil Nadu, this Court of the view that the entire issues relating to admission for Post Graduate Degree Medical Courses are settled by the Hon'ble Three Judges Bench of the Hon'ble Supreme Court of India in the case of State of Uttar Pradesh & another Vs. Dinesh Singh Chowhan [2016 9 SCC 749].

11. Let us first look into the Post Graduate Medical Education Regulations, 2000. The said Regulation was issued by the Medical Council of India in exercise of power conferred by Section 33 r/w 20 of Medical Council Act 1956 (102/1956). The Medical Council of India in the provisions sanctioned by the Central Government made regulations.

12. Goals and general objectives of Post Graduate Medical Education Programme to be observed by the Post Graduate Teaching Institutions are enumerated in Regulation II. Regulation II (1) speaks about the goal as under;

"Postgraduate Medical Education in broad specialties shall be of three years duration in the case of degree course and two years in the case of Diploma course after MBBS and in the case of super specialties the duration shall be of three years after MD/MS with the exceptions wherever indicated."

The regulation 3.2 dealt with general objectives of post graduate training expected from the students of post graduate at the end of post graduate training as under;

- i. Recognize the importance to the concerned speciality in the context of the health needs of the community and the national priorities in the health section.
- ii. Practice the specialty concerned ethically and in step with

the principles of primary health care.

- iii. Demonstrate sufficient understanding of the basic sciences relevant to the concerned specialty.
- iv. Identify social, economic, environmental, biological and emotional determinants of health in a given case, and taken them into account while planning therapeutic, rehabilitative, preventive and primitive measure/strategies.
- v. Diagnose and manage majority of the conditions in the specialty concerned on the basis of clinical assessment and appropriately selected and conducted investigations.
- vi. Plan and advise measures for the prevention and rehabilitation of patients suffering from disease and disability related to the specialty.
- vii. Demonstrate skills in documentation of individual case details as well as morbidity and mortality rate relevant to the assigned situation.
- viii. Demonstrate empathy and humane approach towards patients and their families and exhibit interpersonal behaviour in accordance with the societal norms and expectations.
- ix. Play the assigned role in the implementation of national health programme, effectively and responsibly.
- x. Organize and supervise the chosen/assigned health care services demonstrating adequate managerial skills in the clinic/hospital or the field situation.
- xi. Develop skills as a self-directed learner, recognize continuing education needs; select and use appropriate learning resources.
- xii. Demonstrate competence in basic concepts of research methodology and epidemiology, and be able to critically analyse relevant published research literature.
- xiii. Develop skills in using educational methods and techniques and applicable to the teaching of medical\ nursing students, general physicians and paramedical health workers.
- xiv. Function as an effective leader of a health team engaged in health care, research or training.

The regulation 5 speaks about the components of the post graduate curriculum:

The major components of the Postgraduate curriculum shall be:

- i. Theoretical knowledge
- ii. Practical and clinical Skills
- iii. Thesis skills
- iv. Attitudes including communication skills
- v. Training in research methodology

Now let us now see the Regulation 9 which deals with the selection of post graduate students.

- I. There shall be a single eligibility cum entrance examination namely 'National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses' in each academic year. The overall superintendence, direction and

control of National Eligibility-cum-Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of the Central Government shall select organization/s to conduct 'National Eligibility-cum-Entrance Test for admission to Postgraduate courses'.

- II. 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%. Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates. Provided further that this entire exercise shall be completed by each medical college / institution as per the statutory time schedule for admissions.
- III. In order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% (Fifty Percent) marks in 'National Eligibility-cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum percentage marks shall be 40% (Forty Percent) and in respect of candidates as provided in clause 9 (II) above with locomotory disability of lower limbs, the minimum percentage marks shall be 45% (Forty Five Percent) in the National Eligibility-cum-Entrance Test : Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.
- IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/ Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post Graduate courses from the said merit lists only.
- V. No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub Clause (II) above shall be admitted to any Postgraduate courses in the said

academic year.

VI. In non-Governmental medical colleges/institutions, 50% (Fifty Percent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Percent) of the seats shall be filled by the concerned medical colleges/institutions on the basis of the 10 merit list prepared as per the marks obtained in National Eligibility-cum Entrance Test."

The regulation 9 deals with procedure for selection of candidates for post graduate courses. The amendment was issued to clause 9 as below;

"Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and difficult areas shall be as defined by State Government/Competent authority from time to time."

13. In respect of this Regulation, the Hon'ble Supreme Court of India in State of Uttar Pradesh & another Vs. Dinesh Singh Chowhan [2016 9 SCC 749], cited supra, illustrated the powers of the State to frame the Rules and emphasized that any Rule or Notification issued by the State Government should not be in contravention to the provisions of the Medical Council of India, Post Graduate Medical Education Regulations, 2000. This Court has shown some anxiety to look into the prospectus issued by the State Government for admission to Post Graduate Medical Courses. Chapter VI deals with the 'Merit List', as under:

VI. MERIT LIST

The Merit List will be drawn for a Total Mark of 100 by computing the Entrance Examination (NEET PG 2017) Marks and the marks for experience. (90 Entrance Examination (NEET PG 2017) +10 marks for experience). Illustration is given in annexure X.

14. Now the point to be considered is as to whether the prospectus issued by the State Government for admission to Post Graduate Courses are in contradiction or in consonance with the Regulations issued by the Medical Council of India. To deal with this issue, the prospectus issued by the State Government speaks that the total marks of 100 for the NEET Exam is converted to 90 and 10 marks are allotted for experience. The illustration given in Annexure X to the Prospectus, is extracted hereunder;

1. Candidate D who is non service candidate secured Marks 958.2541 in NEET PG 2017. Completed MBBS on 31.01.2010.
2. Candidate E who is Service Candidate and working in Rural

Primary Health Centre secured marks 958.2540 in NEET PG2017. Completed MBBS on 31.01.2012. Date of joining service : 01.12.2014

3. Candidate F who is service candidate and working in Primary Health Centre in Hilly area secured Marks 957.2540 in NEET PG2017. Completed MBBS on 31.01.2014. Date of joining service : 01.12.2014

Merit List

Candidate	NEET Score	Computed to 90	Experience marks	Total marks	General Merit
D	958.2541	57.495246	07	64.495246	1
E	958.2540	57.495240	05+02 = 07	64.495240	2
F	957.2540	57.435240	03+04 = 07	64.435240	3

15. This apart, the prospectus clause 17 (a) empowers the Selecting Authority to award one mark for each completed year of service after completion of CRRI with the maximum mark of 10. This apart, the marks for service candidates served in Rural/Hilly/ difficult areas are provided as under;

- 1) Rural area - 1 mark
- 2) Hilly area - 2 marks
- 3) Remote/difficult area - 2 marks

Further 2 marks are given to the candidates who worked in Government Hospitals, Primary Health Centres and Government Medical College Hospitals of Thiruvavur, Nagapattinam and Ramanathapuram Districts, limited to a maximum of 10 marks. Thus, the State Government creates the separate method of awarding of marks to in-service candidates and also for non-service candidates.

16. The learned Senior counsel for Medical Council of India Mr. Vijayanarayanan, contended that Rule 9 of the Medical Council of India Regulation was notified with effect from 27th December, 2010 and as in the case reported in 2014 3 SCC 305, dated 18th July 2013, the Regulation was struck down by the Hon'ble Apex Court and the Review Application filed by the Medical Council of India was allowed by the Hon'ble Apex Court on 11.04.2016. By virtue of the order passed in the Review Application, the Medical Council of India Post Graduate Medical Education Regulations, 2000 was revived and came into force. The main ground for setting aside the Regulation by the Hon'ble Apex Court earlier was that, the Regulation was not supported by any provision of Indian Medical Council Act, 1956, as there was no statutory back up. In order to save the Regulation, subsequent to the judgment of the Hon'ble Apex Court, section 10(D) was inserted by the Central Government in the Act, which reads as follows;

"10 D. There shall be conducted a uniform entrance

examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:

Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a Private Medical College) where such State has not opted for such examination."

By virtue of insertion of section 10(D) of the Indian Medical Council Act, 1956, the legal validity of this Medical Council of India Regulation, is protected.

17.The learned Senior Counsel had taken the Court on various inconsistent clauses incorporated by the State Government in the prospectus issued for admission to Post Graduate Medical Courses for the Academic Year 2017-18. The learned senior counsel insisted that some of the clauses are totally inconsistent and in violation of Medical Council of India Regulations and therefore, the Post Graduate Medical Courses in the State Government has to be regulated in consonance with the Medical Council of India Regulations and the selection procedure contemplated in the amended MCI Regulations, 2000, is to be adopted.

18.Clause 16 of the prospectus converting the NEET marks from 100 to 90 and adding 10 marks separately for experience itself is in violation of the Medical Council of India Regulations. The State Government has no authority to tinker with the nomenclature prescribed for the NEET Exam and further converting the marks awarded by the NEET from 100 to 90 and adding 10 marks separately for experience will amount to impinging the MCI Regulations and the State Government has no authority to do so. Further, the learned Senior Counsel contended that an Institutional Reservation is created for in-service candidates.

19.What was intended by the Medical Council of India Regulation is, to grant weightage to the in-service candidates serving in Rural /remote /difficult areas, and such areas has to be notified by the State Government. The Medical Council of India Regulations did not permit the State Government to create separate clause of in-service candidates by itself. If the object of the Medical Council of India Regulations is taken into consideration, the standard of Post Graduate Medical Course admission are to be maintained uniformly in all the States, and any dilution will affect the Medical Education and the public in

general. This apart, granting of marks for experience after completion of CRRI for all the candidates both service and non-service is in violation of Medical Council of India Regulations and it amounts to institutional reservation and impermissible under the Medical Council of India Regulations.

20. The Learned Senior Council strenuously contended that challenging of the prospectus by the candidates in the Writ Petition are insignificant because, candidates seeking admission for Post Graduate Medical Courses will file writ petitions on their convenience and to suit their eligibility criteria, with an idea to secure admission. But, Constitutional Courts cannot shut its eyes, if any glaring violation committed by the State Government for admission to Post Graduate Medical Courses and the same is to be seriously looked into. There must be a linkage between the NEET Marks and the incentive marks awarded in accordance with the MCI Regulations.

21. Any prospectus and selection procedures notified by the state government should be in accord with the MCI Regulation. NEET marks awarded through common entrance examination cannot be altered or tinkered by the State and a separate procedure cannot be adopted for awarding incentive marks.

Section 33(b) of State prospectus stipulates as below;

" 50% of seats in each speciality and in each college are reserved for service candidates, in addition to those service candidates selected in the open category. In case an odd number seat remains in any specialty in the total seats sanctioned for that specialty, that seat shall be filled by merit and communal reservation (example 1). The odd seat stated above is referable to each specialty and not to each college (as illustrated in example 2)"

Clauses states that 50% of seats in each specialty and in each college are reserved for service candidates. The said reservation of 50% for in-service candidates are not contemplated in MCI Regulation. Therefore, the said clause also is in violation of MCI Regulation. What is contemplated in MCI Regulation 9(IV) is awarding of 10% of the marks obtained for each year of service in remote/ difficult areas upto the maximum 30% of marks obtained in NEET. Of course, the declaration of areas remote / difficult is entrusted with the state government / competent authority from time to time.

22. The separate reservation of 50% was awarded only for post graduate diploma courses by virtue of MCI Regulation 9(1) (b), but no such reservation was granted for post graduate medical courses. The prospectus issued by the State of Tamil Nadu granting 50% reservation for in service candidates for admission to post graduate medical courses are directly in violation of MCI regulation. Since, no such reservation is permissible, as the reservation of granting of 50% reservation for P.G.Diploma course have different objectives and the same

cannot be converted by the State for admission to the Post Graduate Courses also.

23. Clause 33(b) of the prospectus spells out 50% of seats in each speciality and in each college are reserved for service candidates, in addition to those service candidates selected in the open category. Undoubtedly, such allotment of 50% of seats in favour of in service candidates amounts to institutional reservation, not contemplated under the MCI Regulations, 2000.

24. The said clause will not stand under the scrutiny of Article 14 and 16 of the Constitution of India, in view of the fact that it creates a class within a class amongst the eligible candidates.

25. The clause amounts to discrimination, creating anomalous situation amongst service and non-service candidates. Such an institutional reservation is alien to the provisions of our constitution and it violates the principles enshrined by the Hon'ble Supreme Court of India.

26. The Learned Senior Counsel at the outset stated that if Regulation 9(IV) is implemented by the State Government the in-service candidates serving in remote\difficult areas will get more marks than that of the prospectus issued by the State.

27. The learned counsel appearing for the candidates advanced their arguments that the State is empowered to frame its own procedure for admission of post graduate medical courses within the state. In support of their contentions they have stated that the MCI Regulations permit the state government to formulate their own admission process and thus, there is no infirmity in the prospectus issued by the State Government. Further, the awarding of incentive marks to in-service candidates served in rural, hilly and remote areas are in accord with the regulation 9(IV) and the procedure adopted by the State cannot be questioned or construed as, in violation of MCI Regulation. When the Central Government granted permission to the State Government to formulate the procedure for admission, it is for the State to decide the procedure considering the factual situations prevailing in their respective states and therefore there is no irregularity or illegality, in prescribing various clauses by the State, in the prospectus for admission to post graduate medical courses.

28. It is contended that the original writ petition filed by the 1st respondent /writ petitioner itself is not maintainable. Since, the NEET Exam and the prospectus are not challenged in the writ petition. In the absence of questioning the legal validity, the prospectus, it is to be construed that, the 1st respondent\writ petitioner has accepted the prospectus and

appeared in the written examination. Thus, the writ petition itself is to be dismissed as not maintainable.

Further, necessary parties including non service candidates are not impleaded in the writ petition. In the absence of necessary parties, the writ ought not to have issued by the Learned Single Judge. The questions put forth by the respective counsels are that the 1st respondent/writ petitioner participated in the written examination admitting the conditions stipulated in the prospectus, therefore, he is not entitled to seek any relief from this Court, disputing the clauses in the prospectus. The 1st respondent/writ petitioner after admitting the prospectus came out by way of writ petition, seeking implementation of clause 9(IV) of MCI Regulation. Thus, he is estopped from doing so.

29. With regard to the impleading of necessary parties to the lis as raised by the learned counsel for the appellant, the Court is of the view that the lis on hand relates to admission to Post Graduate Courses and large number of students in the State appeared in the NEET Exam. This apart, the Hon'ble Supreme Court considered and decided the issue in respect of Regulation 9(4) of the MCI Regulations in the case of STATE OF U.P. v DINESH SINGH CHAUDHAN. Moreso, in respect of in service candidates, the authoritative pronouncement with regard to the authority of Medical Council of India under the Indian Medical Council Act, 1956, the authority of the State with reference to Regulation 9 of the MCI Regulation, 2000, is the binding law covering the entire subject.

30. Therefore, all Courts and the State Governments have to adhere the binding precedent enshrined by the Hon'ble Apex Court of India. Thus, the points to be considered is these Writ Appeals is mainly, whether the prospectus issued by the State of Tamil Nadu for admission to Post Graduate Medical Courses are in consonance with Regulation 9 of the MCI Regulation, 2000.

31. In the light of this arguments, this Court has to now proceed with the Judgement of the Hon'ble Three Judges of the Supreme Court of India in the State of Uttar Pradesh & another Vs. Dinesh Singh Chowhan in 2016 9 SCC 749, wherein all these aspects more specifically covering the MCI Regulations and powers of the State to issue admission procedures on various lines . Following paragraphs are necessary for the appreciation of these batch of Writ Appeals.

"4.The provision, however, was only to give weightage of marks to in-service candidates who had worked for specified period in CHC and PHC Hospitals in notified remote, difficult or backward areas of the State. On the other hand, reservation has been limited to postgraduate "diploma"courses by the said Regulations. The High Court,

therefore, called upon the Medical Council of India to clarify its stand in this behalf."

32. Their Lordships distinguished granting of additional marks to the in-service candidates. Regulation 9(IV) stipulates the additional marks for in-service candidates in order to provide weightage of marks for the candidates worked for a specific period in the notified remote/difficult areas in the State and the state is empowered to issue notification declaring such areas, as it deem fit.

33. In Paragraph No.5 of the Judgment, it is stated that "No reservation for in service candidates is permissible in respect of post graduate degree courses; unlike for the post graduate diploma courses, in terms of regulations framed in that behalf".

34. In paragraph No.6 of the Judgment, it is clarified, that as per Regulation 9 at the best, the in-service candidates, worked in remote and difficult areas in the State as notified by the State Government /competent authority from time to time, alone would be eligible for weightage of marks as incentive at 10% of the marks obtained for each year of service in such areas up to the maximum of 30% marks obtained in National Eligibility/Entrance Test.

35. The issue formulated by the Hon'ble Apex Court in paragraph 19 is as under;

"19. Having considered the rival submissions, the first question that needs to be answered is:

whether the High Court exceeded its jurisdiction in setting aside the Government Order dated 28.02.2014 providing for reservation to in-service candidates, when the writpetition filed by the in-service candidates was limited to equate them with the in-service candidates who had the experience of working in remote or difficult areas."

36. In Paragraph No. 20 of the Judgment, it has been held that "it is not open to the State Government to provide for dispensation different than the one specified by the Central Act and Regulations made thereunder."

"24. By now, it is well established that Regulation 9 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to postgraduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution (see preeti Srivastava V. State of M.P). The procedure for selection of candidates for the postgraduate degree courses is one such

area on which the central legislation and regulations must prevail.

Paragraph 25.4 is extracted hereunder;

"....It predicates that in determining the merit of the candidates who are in service of the Government or a public authority, weightage in the marks may be given by the Government /competent authority as an incentive @ 10% of the marks obtained for each year of service in specified remote or difficult areas of the State up to the maximum of 30% of the marks obtained in NEET. This provision even if read liberally does not provide for reservation for in-service candidates, but only of giving a weightage in the form of incentive marks as specified to the class of in-service candidates (who have served in notified remote and difficult areas in the State)"

Paragraph 27 is extracted hereunder

"27. Thus understood, the Central Enactment and the Regulations framed thereunder do not provide for reservation for in-service candidates in Post Graduate "Degree" Courses. As there is no express provision prohibiting reservation to in-service candidates in respect of admission to Post Graduate "Degree" Courses, it was contended that providing for such reservation by the State Government is not impermissible in law. Further, there are precedents of this Court to suggest that such arrangement is permissible as a separate channel of admission for in-service candidates. This argument does not commend to us. In the first place, the decisions pressed into service have considered the provisions regarding admission process governed by the Regulations in force at the relevant time. The admission process in the present case is governed by the Regulations which have come into force from Academic Year 2013-14. This Regulation is a self-contained Code. There is nothing in this Regulation to even remotely indicate that a separate channel for admission to in-service candidates must be provided, at least in respect of Post Graduate "Degree" Courses. In contradistinction, however, 50% seats are earmarked for the Post Graduate "Diploma" Courses for in-service candidates, as is discernible from Clause (VII). If the Regulation intended a similar separate channel for in-service candidates even in respect of Post Graduate "Degree" Courses, that position would have been made clear in Regulation 9 itself. In absence thereof, it must be presumed that a separate channel for in-service candidates is not permissible for admission to Post Graduate "Degree" Courses. Thus, the State Government, in law, had no authority to issue a Government Order such as dated 28th February 2014, to provide to the contrary. Hence, the High Court was fully justified in setting aside the said Government Order being contrary to the mandate of Regulation 9 of the Regulations of 2000, as applicable from Academic Year 2013-14."

"28. In Students' Union Vs. AIIMs, this Court was called upon to examine the question whether seats earmarked for institutional candidates do or do not result in reservation in the sense in which it is understood in the Constitution. After examining earlier decisions on the point, this Court in paragraph 59, noticed the distinction between undergraduate level education which is a primary or basic level of education in medical sciences. The Court held that institutional reservation is not supported by the Constitution or constitutional principles. However, a certain degree of preference for students of the same institution is permissible without making an excessive or substantial departure from the rule of merit and equality. Further, it has to be kept within the limits, minimum standards and merit cannot be diluted as to become practically non-existent.

"29. In the present case, we have held that providing 30% reservation to in-service candidates in Post Graduate "Degree" Courses is not permissible. It does not however, follow that giving weightage or incentive marks to in-service candidates for Post Graduate "Degree" Courses entails in excessive or substantial departure from the rule of merit and equality. For, Regulation 9 recognizes the principle of giving weightage to in-service candidates while determining their merit. In that sense, incentive marks given to in-service candidates is in recognition of their service reckoned in remote and difficult areas of the State, which marks are to be added to the marks obtained by them in the NEET. Weightage or incentive marks specified in Regulation 9 are thus linked to the marks obtained by the in-service candidate in the NEET and reckon the commensurate experience and services rendered by them in notified remote/difficult areas of the State. That is a legitimate and rational basis to encourage the Medical Graduates/Doctors to offer their services and expertise in remote or difficult areas of the State for some time. Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst the young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates) is permissible differentiation whilst determining their merit. It is an objective method of determining their merit. "

"31. However, in the present case, the Medical Council of India itself has framed a Regulation predicating one merit list by adding the weightage of marks assigned to in-service candidates for determining their merit in the NEET."

"33. As aforesaid, the real effect of Regulation 9 is to assign specified marks commensurate with the length of

service rendered by the candidate in notified remote and difficult areas in the State linked to the marks obtained in NEET. That is a procedure prescribed in the Regulation for determining merit of the candidates for admission to the Post Graduate "Degree" Courses for a single State. This serves a dual purpose. Firstly, the fresh qualified Doctors will be attracted to opt for rural service, as later they would stand a good chance to get admission to Post Graduate "Degree" Courses of their choice. Secondly, the Rural Health Care Units run by the Public Authority would be benefitted by Doctors willing to work in notified rural or difficult areas in the State. In our view, a Regulation such as this subserves larger public interest. Our view is reinforced from the dictum in Dr. Snehelata Patnaik's case (supra). The three Judges' Bench by a speaking order opined that giving incentive marks to in-service candidates is inexorable. It is apposite to refer to the dictum in the said decision which reads thus:

" 1. We have already dismissed the writ petition and special leave petitions by our order dated December 5, 1991. We would however, like to make a suggestion to the authorities for their consideration that some preference might be given to in-service candidates who have done five years of rural service. In the first place, it is possible that the facilities for keeping up with the latest medical literature might not be available to such in-service candidates and the nature of their work makes it difficult for them to acquire knowledge about very recent medical research which the candidates who have come after freshly passing their graduation examination might have. Moreover, it might act as an incentive to doctors who had done their graduation to do rural service for some time. Keeping in mind the fact that the rural areas had suffered grievously for non-availability of qualified doctors giving such incentive would be quite in order. Learned counsel for the respondents has, however, drawn our attention to the decision of a Division Bench of two learned Judges of this Court in Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad. It has been observed there that merely by offering a weightage of 15 per cent to a doctor for three years' rural service would not bring about a migration of doctors from the urban to rural areas. They observed that if you want to produce doctors who are MD or MS, particularly surgeons, who are going to operate upon human beings, it is of utmost importance that the selection should be based on merit. Learned Judges have gone on to observe that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post-graduate courses are concerned (see para 12 at page 741).

2. In our opinion, this observation certainly does not constitute the ratio of the decision. The decision is in

no way dependent upon these observations. Moreover, those observations are in connection with all India Selection and do not have equal force when applied to selection from a single State. These observations, however, suggest that the weightage to be given must be the bare minimum required to meet the situation. In these circumstances, we are of the view that the authorities might well consider giving weightage up to a maximum of 5 per cent of marks in favour of in-service candidates who have done rural service for five years or more. The actual percentage would certainly have to be left to the authorities. We also clarify that these suggestions do not in any way confer any legal right on in-service students who have done rural service nor do the suggestions have any application to the selection of the students up to the end of this year." (emphasis supplied)

"34. The crucial question to be examined in this case is: whether the norm specified in Regulation 9 regarding incentive marks can be termed as excessive and unreasonable? Regulation 9, as applicable, does not permit preparation of two merit lists, as predicated in the case of Tirthani (supra). Regulation 9 is a complete Code. It prescribes the basis for determining the eligibilities of the candidates including the method to be adopted for determining the inter se merit, on the basis of one merit list of candidates appearing in the same NEET including by giving commensurate weightage of marks to the in-service candidates. "

37. In all the above paragraphs the Hon'ble Supreme Court pronounced that the incentive marks at 10% in NEET for each year of service upto the maximum of 30% is granted not to provide any reservation for in service candidates, but, only to give weightage in the form of incentive marks as specified in clause 9(iv) for the candidates served in the notified remote/difficult areas in this state.

38. Institutional reservation by the State is impermissible under the Constitution and the State has no authority to issue any such order, when the MCI Regulation itself is self contained code and nothing under the regulation granting separate channel for admission to in- service candidates.

39. The Hon'ble Supreme Court of India while justifying Regulation 9 (iv) regarding incentive marks to in service candidates, stated that the weightage marks given to the eligible inservice candidates willing to perform in NEET and also the performance on the remote/difficult areas in the state and the provision has been made now in force and not merely to provide institutional preference.

40. In paragaraph 39 of the Judgment, the Hon'ble Apex Court

held that "the Court noted that the basis of selection must be strictly as per norms specified in the Medical Council of India Regulations. Any other law with regard to that will be beyond legislative competence of the state legislature."

Accordingly, the proviso to clause (IV) in Regulation 9 was up held in larger public interest.

41. In paragraph 46 , the Hon'ble Supreme Court held that "we may instead mould the relief in the appeals before us by directing all concerned to follow the admission process for academic year 2016-2017 onwards strictly in conformity with the regulations in force, governing the procedure for selection of candidates for post graduate medical degree courses and including determination of relative merit of the candidates, who had appeared in NEET by giving weightage of incentive marks to eligible in-service candidates."

42. The learned Senior Counsel appearing for the appellants contended that the State Government has got powers to regulate the admission procedure and the constitution grants such power to the State, by virtue of entry 25 of the concurrent list III, the power of the State to regulate the admission for higher education is also dealt elaborately by the Hon'ble Supreme Court of India in Sudhir Vs. State of Kerala 2015 6 SCC 685. In that case also the Regulation 9 of the MCI Regulation 2000 was elaborately discussed and decided by the Hon'ble Apex Court in respect of Kerala medical admission to postgraduate courses under the Service Quota Act, 2008, 40% of the available seats in the state of Kerala are reserved for inservice doctors serving in the Health Service Department, Medical College lecturers and doctors serving in the Employees State Insurance Department of the State.

43. The interpretation of powers of the State as well as Centre was declared in unambiguous terms by the Hon'ble Apex Court in the following paragraphs 7, 12, 15, 16, 17, 18, 20, 21 & 24.

"7.The primary ground on which the challenge to the validity of the legislation was mounted by the writ petitioners was that the State legislature could not enact a law that would make selection for admission to the post-graduate courses dependent solely on the seniority of the in- service candidates without prescribing the minimum conditions of eligibility for the candidates concerned. Competence of the State Legislature to enact Section 5(4) of the impugned Legislation was also called in question on the ground that the said piece of legislation violated the regulations framed by the Medical Council of India the authority competent to do so under the Medical Council of India Act, 1956. It was argued that the Post-Graduate Medical Education Regulations, 2000 provided the minimum requirements that all the candidates have to fulfil.

Inasmuch as the State enactment contrary to the said regulation and requirement postulates that selection of candidates shall be made only on the basis of seniority it was beyond the legislative competence of the Kerala State Legislature. The Indian Medical Council Act and the MCI Regulations framed under the same were, argued the writ petitioners- respondents herein, referable only to Entry 66 of List I of Seventh Schedule. Any legislation enacted by the State Legislature in exercise of its power under Entry 25 in List III was subject to any law to the contrary passed by the Parliament in exercise of its power under Entry 66 of List I. That the State Act was reserved for consideration of the President and that it has received the assent of His Excellency in terms of Article 254(2) of the Constitution did not save the legislation from the vice of legislative incompetence. "

"12. The High Court then held that inasmuch as Section 5(4) of the impugned enactment provides for the preparation of a select list of in- service medical officers based on seniority, such selection shall be made from among in-service medical officers only who have appeared in the common entrance test of post-graduate medical education and obtained the minimum eligibility bench mark in that test in terms of the MCI Regulations. The High Court held:

The conclusion is that the provision in Section 5 (4) of the State Act that the select list of in-service medical officers for postgraduate medical education shall be strictly on the basis of seniority is subject to the requirement that such selection can be made only from among those in- service medical officers who have undergone the common entrance test for postgraduate medical education and have obtained the minimum eligibility bench mark in that test in terms of the MCI Regulations. It is so declared. These writ petitions are allowed to that extent."

"15. Regulation 9 is, in our opinion, a complete code by itself inasmuch as it prescribes the basis for determining the eligibility of the candidates including the method to be adopted for determining the inter se merit which remains the only basis for such admissions. To the performance in the entrance test can be added weightage on account of rural service rendered by the candidates in the manner and to the extent indicated in the third proviso to Regulation 9. Suffice it to say that but for the impugned legislation making an attempt to change the basis on which admissions can be made, such admissions must, in all categories, be made only on the basis of merit as determined in terms of the provision extracted above. That method, however, is given a go-bye by the impugned legislation when it provides that in-service candidates seeking admission in the quota reserved for in-service doctors shall be granted such admission not on the basis of one of the methodologies

sanctioned by Rule 9(2) of the Rules but on the basis of inter-se seniority of such candidates. The question is whether the State was competent to enact such a law. Our answer to that question is in the negative. The reasons are not far to seek."

"16. As noted earlier, the subject is fully covered by several pronouncements of this Court to which we shall presently refer but before we do so we may extract Article 246 of the Constitution which reads as under:

"246. Subject matter of laws made by Parliament and by the Legislatures of States (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List')

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List"

17. We may also refer, at this stage, to Entry 66 of List I which runs as under:

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

18. In State of T.N. and Anr. v. Adhiyaman Educational & Research Institute & Ors. (1995) 4 SCC 104, this Court was examining the scope of Entry 66 of the Union List vis-a-vis Entry 25 of the Concurrent List in relation to the provisions of Tamil Nadu Private Colleges (Regulation) Act and Madras University Act vis-a-vis Council for Technical Education Act, 1987. This Court held that the Central Act was intended to achieve the object of coordinated and integrated development of the technical education system at all levels throughout the country with a view to promoting qualitative improvement of such education. This Court further held that the Central Act namely, All India Council for Technical Education Act, 1987 was within the scope of Entry 66 of List I and Entry 25 of List III and that on the subject covered by the statute the State could neither make a law under Entry 11 of List II nor under Entry 25 of List III after the 42nd Amendment. If there was any law existing

immediately before the commencement of the Constitution within the meaning of Article 372, such as the Madras University Act, 1923, the Central Legislation would, to the extent of repugnancy, impliedly repeal such pre-existing law.

20. In Dr. Preeti Srivastava (supra) one of the questions that fell for consideration was whether the standard of education and admission criteria could be laid under Entry 25 of List III by a Central Legislation. A Constitution Bench of this Court by majority held that standard of education and admission criteria could be laid down under Entry 66 of List I and under Entry 25 of List III. It was held that both the Union as well as the State have the power to legislate on education including medical education and the State has the right to control education so far as the field is not occupied by any union legislation. When the maximum marks to be obtained in the entrance test for admission to the institutions for higher education including higher medical education is fixed, the State cannot adversely affect the standards laid down by the union government. It was held that it is for the MCI to determine reservation to be made for SC/ST and OBC candidates and lowering the qualifying marks in their favour on the pretext or pretence of public interest.

21. Speaking for the majority, Sujata V. Manohar, J. summed up the legal position as under:

"35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on "education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour." [pic] Entry 25 is subject, inter alia, to Entry 66 of List I.

Entry 66 of List I is as follows:

"66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals

with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

- (1) the calibre of the teaching staff;
- (2) a proper syllabus designed to achieve a high level of education in the given span of time;
- (3) the student-teacher ratio;
- (4) the ratio between the students and the hospital beds available to each student;
- (5) the calibre of the students admitted to the institution;
- (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
- (7). adequate accommodation for the college and the attached hospital; and

(8). the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."

24. It is in the light of the above pronouncements futile to argue that the impugned legislation can hold the field even when it is in clear breach of the Medical Council of India's Regulations. The High Court was, in our opinion, right in holding that inasmuch as the provisions of Section 5(4) of the impugned enactment provides a basis for selection of candidates different from the one stipulated by the MCI Regulations it was beyond the legislative competence of the State Legislature. Having said that the High Court adopted a reconciliatory approach when it directed that seniority of the in-service candidates will continue to play a role provided the candidates concerned have appeared in the common entrance test and secured the minimum percentage of marks stipulated by the Regulations. The High Court was, in our opinion, not correct in making that declaration. That is because, even when in Gopal D. Tirthani's case (supra) this Court has allowed in-service candidates to be treated as a separate channel for admission to post-graduate course within that category also admission can be granted only on the basis of merit. A meritorious in-service candidate cannot be denied admission only because he has an eligible senior above him though lower in merit. It is now fairly well settled that merit and merit alone can be the basis of admission among candidates belonging to any given category. In service candidates belong to one category. Their inter-se merit cannot be overlooked only to promote seniority which has no place in the scheme of MCI Regulations. That does not mean that merit based admissions to in-service candidates cannot take into account the service rendered by such candidates in rural areas. Weightage for such service is permissible while determining the merit of the candidates in terms of the third proviso to Regulation 9 (supra). Suffice it to say that Regulation 9 remains as the only effective and permissible basis for granting admission to in-service candidates provisions of Section 5(4) of the impugned enactment notwithstanding. That being so, admissions can and ought to be made only on the basis of inter se merit of the candidates determined in terms of the said principle which gives no weightage to seniority simplicitor. "

44. The said judgment declared that MCI Regulation 9 permits only effective and permissible principles of granting admission to in service candidates. Thus, the Hon'ble Supreme Court has taken a firm view on MCI Regulations, more particularly, Admission to Post Graduate Medical Courses. Any deviation or violation will result in discrimination and will affect the uniformity in selection procedures. The whole object of NEET Examination and prescription of regulation by MCI is to maintain

uniformity in standards of admission for postgraduate courses. The State Government has no option in respect of implementing the MCI Regulations by virtue of the interpretations accorded by the Hon'ble Supreme Court of India, in the above two cases, cited supra.

45. Thus, the prospectus which is issued by the State of Tamil Nadu creates a separate reservation for inservice candidates by allotting 50% of seats, converting NEET marks and by awarding 10 marks separately for in service candidates which are in violation of MCI Regulations.

46. It is brought to the notice of this Court that, both for service and non-service candidates, the NEET marks are converted from 100 to 90. Thereafter an additional 10 marks for inservice candidates are awarded as per prospectus. This will also create discrimination between inservice and non-service candidates. First of all the conversion of NEET marks by the State Government to suit their convenience is not permissible under the MCI Regulations. After converting the NEET marks for all the candidates, at their convenience and awarding of marks for in-service candidates working in remote / difficult areas are inconsistent/repugnant to the Regulations. Such design of awarding of marks by the state government is to be declared unconstitutional and in violation of MCI Regulations and it creates institutional reservation and non-service candidates are discriminated.

47. Let us examine the doctrine of repugnancy in respect of Article 254, 7th Schedule Entry 25 List III. The State Prospectus creates inconsistencies within and on MCI Regulations, 2000. To that extent, the Clauses 16,17, and 33(2) are repugnant. In support of this, the Division Bench of this Court, in the case of THE TAMIL NADU DR.M.G.R.MEDICAL UNIVERSITY v. P. ANAND [2011 (6) CTC 801], while dealing with Regulations 12(4) of MCA Regulations observed as under:

"37. In the case on hand, we are not concerned with eligibility criteria for admission, but dealing with the examination regulations and distribution of marks to various disciplines. Admittedly, M.B.B.S. seats have been reserved in all colleges in the country for all India quota in which candidates throughout the country compete for seats. Similarly quota has also been prescribed for post graduate courses as well. Therefore, MCI being conscious of the fact that there should not only be a uniform pattern of education, but uniform examination regulations which deals with attendance, internal assessment, University examination and distribution of Marks to various disciplines framed Regulation. In the earlier part of this order, we have extracted regulation 12(4) of the MCI Regulation. A perusal of the said

regulation makes it clear that a candidate would be declared pass in each of the subject if he/she obtained 50% in aggregate with a minimum of 50% in theory including orals and minimum of 50% in practicals/clinicals. These regulations having been framed by a Central body are not merely directory, but are binding on the appellant University. Therefore, the University may not justified in framing a regulation which is inconsistent with the MCI Regulation.

38. On a careful reading and comparison of Regulation 12(4) of MCI Regulation and the impugned guidelines issued by the Appellant University, it is prima facie clear that the manner in which a candidate would be declared to have been passed, has been modified by the appellant University, thus being inconsistent with the MCI Regulation. The appellant University seek to justify their action by stating that the stipulation in the guidelines framed by the appellant does not lower the norms laid down by MCI, but has fixed higher standards in order to achieve excellence in education. On a perusal of the impugned guidelines framed by the appellant University, we fail to understand as to how it would satisfy the test of prescribing higher standards. As noticed above, the MCI Regulation declares a candidate to have passed if in each of the subject he/she has obtained 50% in aggregate with a minimum of 50% in theory including orals and minimum of 50% in practicals/clinicals. Therefore, by prescribing a guideline and dividing the clinical subject into two namely general surgery and orthopeadics and prescribing 50% mark in each is undoubtedly in conflict with the regulation 12(4) of the MCI Regulation and there is no material to establish that by virtue of the impugned regulation, the standards of education would improve. After having gone through the facts of the case, we have found that by virtue of the impugned guidelines an anomalous situation has arisen since candidates who have under gone their M.B.B.S. course in any other University, having been declared pass by applying the MCI guidelines would be not qualify to apply for post graduate course if the guideline of the appellant University is applied to their cases yet on account of the All India Quota made available, such candidates are permitted to apply for such courses, though they do not satisfy the guidelines of the appellant University.

39. In Maharashtra Universities of Health Sciences vs. Paryani Mukesh Jawaharlal (2007) 10 SCC 201, the Hon'ble Supreme Court, considered the interpretation of Regulation 12(2) and 12(4) of the MCI Regulations.

The Hon'ble Supreme Court held that any regulation made by Universities which are inconsistent with the MCI Regulations will not be valid to the extent of inconsistency. Reliance was placed on the decisions in *Adhiyaman*, *Preeti Srivastava* and *MCI vs. State of Karnataka*. Further held that if the regulation of any University merely implements or makes it explicit what is implicit in Regulation 12(4) of the MCI Regulation, then the same will be valid and binding. Paragraph 19 & 20 of the said judgment would be very relevant for the purpose of this case and quoted herein below:-

19. The scheme of MCI Regulation 12 also makes it clear that there will be internal assessment as well as the external assessment (University examination) in regard to theory as well as practicals. Clause (2) of MCI Regulation 12 makes it clear that in addition to providing the eligibility to appear in the University examination, the internal assessment also provides a weightage to an extent of 20% of the total marks in each subject. Clause (4) of MCI Regulation 12 makes it clear that for passing in each subject, a candidate must obtain 50% of marks in the aggregate. There is no controversy in regard to what is meant by aggregate. It is the aggregate of external examination marks and internal assessment marks. Where the maximum of 100 marks are for theory papers, 20 marks are for oral, 40 marks are for practicals, in all 160 for externals and 40 marks are for internal assessment, the aggregate is 200. A candidate should secure in all a minimum of 100 marks out of 200. The requirement relating to passing in aggregate complies with sub-clause (iv) of Clause (2) of Regulation 12, as internal assessment marks (secured out of 40 marks, which is 20% of total marks) are also counted.

20. The controversy is in regard to the method of calculating the passing marks for the other two heads of passing, namely, theory including orals and practicals. The scheme of the MCI Regulations requires the student to pass the University examination (externals) with 50% in theory (including oral) and 50% in practicals, and also secure 50% of marks in the aggregate of the total marks for external examination and total marks for internal assessment."

The Division Bench came to the conclusion that the criteria framed by the Dr.M.G.R.Medical University is consistent/repugnant to Regulation 12(4) of the Medical Council of India Regulations on Graduate Medical Education, 1997(as

amended upto November 2010).

48. In the present context, the State Government cannot adopt same standard for admission to the Under Graduate Courses and the Post Graduate Courses. The vast difference existing between these two courses cannot be compared with. For instance, Under Graduate Courses (M.B.B.S.,) are mostly general medical studies and the Post Graduate Courses are specialized in nature, which require certain amount of additional competence and in the complicated case of health issues, such an additional competence for Medical Practitioners are certainly required. Any dilution of the standards in higher education will certainly have an adverse impact in the quality of medical education. It affects the diagnosis and nature of treatment provided to the general public.

49. Apart from this, right to life under article 21 of the Constitution of India as interpreted by the Hon'ble Supreme Court, includes medical facilities to be provided by the State. When the medical facilities are integral part of fundamental right under Article 21 of the Constitution of India, the standard and quality of higher education for medical studies cannot be diluted and uniformity has to be maintained regarding the standard of education and merit alone should prevail. During the assessment of merit certain amount of incentives or concessions can be shown in order to uplift certain categories of candidates, who do not have the facilities to acquire themselves on par with the candidates in urban areas. While awarding incentives to such candidates, the standard of medical education cannot be tampered with. Any tinkering of the prescribed standards of Medical Council of India will have an adverse effect on the quality of higher medical education. Therefore, the medical education being an integral part of Article 21 of the Constitution of India, fundamental right of citizen, the State has no authority to impinge the standard of higher education as determined by the Medical Council of India Regulations.

50. Further, the question to be considered is whether the State Prospectus is repugnant to or encroaches upon or is in conflict with the power of the Central Legislature to make laws in respect of matters specified in Entry 66 of List I of the Seventh Schedule to the Constitution. The Indian Medical Council pursuant to Section 33 of the Indian Medical Council Act had formulated regulations made by the Central Government laying down the criteria or standards for admitting the candidates to various Post Graduate disciplines in the Medical Colleges of the State. The very Regulation has been quoted herein before, clearly prescribe that the candidates should be selected strictly on merit.

51. In respect of remote/difficult areas contemplated in

regulation 9(IV), this court of the view that, the regulation itself clarifies that the remote/difficult areas especially as defined by the State/ Competent Authority from time to time and, it is for the state to notify difficult / remote areas. Therefore, the hilly areas also to be construed as difficult/remote areas. There may be areas in respect of prospectus issued by the State of Tamil Nadu, such areas are notified in the Annexure. Thus, there cannot be any dispute with regard to that. The arguments advanced by the learned Senior Counsel appearing for the appellants, the hilly areas are not contemplated under MCI Regulation 9(IV), deserves rejection, in view of the fact that clarification contemplated under MCI Regulation can be interpreted, so as to include the hilly areas also. Rightly, the State Government included hilly areas in the Annexure to the prospectus. Declaration of areas by the State Government is not in dispute. The dispute is awarding of marks to in service candidates by converting the NEET marks from 100% to 90% and further creating an institutional reservation for in service candidates by discriminating the non-service candidates.

52. Whether the prospectus is prepared in violation of MCI Regulation and the same creates contradiction by itself. The High Court of Rajasthan Bench at Jaipur rendered Judgment in Civil Writ No. 4005/2017 and Regulation 9 (IV) of Regulation 2000 is made to prevail over such procedures in that case where the restrictions of awarding of marks was prescribed by the State of Rajasthan. The court held that ;

" the State Government could not be held justified in restricting grant of weightage of marks in the form of incentive to the limited extent of 10% irrespective of length of service rendered, when the proviso to Clause (IV) of Reg.9 envisages at the rate of 10% of marks for each year of service upto 30% of the marks secured in NEET Examination and such decision of the Government is not in conformity with the scheme to the proviso to Reg.9(IV) of the Regulations, 2000. At the same time, it is always open for the State Government to re-visit in identifying the remote and difficult areas of the State in fulfillment of the mandate of Clause (IV) of Reg.9 of Regulations, 2000."

The High Court of Punjab & Haryana also decided the case on 26.04.2017 in W.P. No. 7026 of 2017, wherein the Court directed the State Government of Punjab and Haryana to extend the benefit proviso of Regulation 9(IV) to provide medical institution as well. Further directed that the benefit of service in remote areas directly to the proviso 9(IV) of Regulation 2000.

53. In many States of our Country has recognized the importance of Regulation 9(IV) of MCI Regulation 2000. The State of Tamil Nadu is also has to fall in line with MCI Regulation without any clause in prospectus issued in

contravention with MCI Regulations, 2000.

54. The relief sought for in the writ petition that there is no challenge regarding prospectus or NEET Examination, this Court is of the firm view that the very purpose of these Writ Appeals challenging the order passed by the Learned Single Judge is relating to the admission for postgraduate medical courses. Large number of candidates appeared in the NEET Exam are waiting for admission to postgraduate medical courses. Hence, the subject involved is of larger public interest of the candidates and further admission to the postgraduate courses is of general importance of public interest. When such large number of candidates and their interest are in stake, this Court cannot shut its eyes by restricting the relief sought for in the writ of petition and it is the duty of the Court to see that even in the absence of any prayer, the Court has to mould the reliefs. A pragmatic view is to be adopted in order to provide substantial justice to all concerned, since the case is relating to the students, who are aspiring for admission to postgraduate medical courses, the Court cannot throw away the candidates, not appeared before it. Hence, mere technicality raised by the learned counsel that no prayer sought for, deserves outright rejection.

55. Mr. Wilson, learned Senior Counsel cited the Full Bench Judgment of this Court in the case of Dr. Murali Vs. Dr. Kamalakanan and he has taken the Court to various pages of this judgment, but the judgment was pronounced on 01.10.1999, i.e., prior to the issue of amended MCI Regulations, 2000. Therefore, no consideration of this judgment is required. Further, he has cited the judgment rendered on 29.09.2001 in W.P. No. 14855 of 2001, which also deserves no consideration in view of amended Regulation.

56. Further, the legal principles laid down in Dr. Preethi Srivathsava case was considered by Their Lordships' in the case of Dinesh Singh Chowhan as well as Sudhir Vs. State of Kerala. Therefore, separate discussion on the principles in respect of Regulation 9 (IV) of Regulation, 2000 is not required at present.

57. The Hon'ble Supreme Court of India in the case of Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and others reported in (2016) 7 SCC 353, the constitution Bench of the Hon'ble Supreme Court of India held that selection to be strictly on merits. The following paragraphs are relevant for the case on hand.

"103. The second/other aspect of Education is with regard to the implementation of the standards of education determined by the Parliament, and the Regulation of the complete activity of Education. This activity necessarily entails the application of the standards determined by the Parliament in all

educational institutions in accordance with the local and regional needs. Thus, while Entry 66 List I dealt with determination and coordination of standards, on the other hand, the original Entry 11 of List II granted the States the exclusive power to legislate with respect to all other aspects of education, except the determination of minimum standards and coordination which was in national interest. Subsequently, vide the Constitution (Forty-second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to Education was removed and deleted, and the same was replaced by amending Entry 25, List III, granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of Education, except that which was specifically covered by Entry 63 to 66 of the List I.

"104. No doubt, in Bharti Vidyapeeth it has been observed that the entire gamut of admission falls under Entry 66 of List I. The said judgment by a Bench of two Judges is, however, contrary to law laid down in earlier larger Bench decisions. In Gujarat University, a Bench of five Judges examined the scope of Entry 2 of List II (which is now Entry 25 of List III) with reference to Entry 66 of List I. It was held that the power of the State to legislate in respect of education to the extent it is entrusted to the Parliament, is deemed to be restricted. Coordination and determination of standards was in the purview of List I and power of the State was subject to power of the Union on the said subject. It was held that the two entries overlapped to some extent and to the extent of overlapping the power conferred by Entry 66 of List I must prevail over power of the State. Validity of a state legislation depends upon whether it prejudicially affects 'coordination or determination of standards', even in absence of a union legislation. In R. Chitralkha v. State of Mysore[27], the same issue was again considered. It was observed that if the impact of State law is heavy or devastating as to wipe out or abridge the central field, it may be struck down. In State of T.N. & Anr. v. Adhiyaman Educational & Research Institute & Ors. [28], it was observed that to the extent that State legislation is in conflict with the Central legislation under Entry 25, it would be void and inoperative. To the same effect is the view taken in Dr. Preeti Srivastava and State of Maharashtra v. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya & Ors.[29] Though the view taken in State of Madhya Pradesh v. Kumari Nivedita Jain & Ors.[30] and Ajay Kumar Singh &

Ors. v. State of Bihar & Ors.[31] to the effect that admission standards covered by Entry 66 of List I could apply only post admissions was overruled in Dr. Preeti Srivastava, it was not held that the entire gamut of admissions was covered by List I as wrongly assumed in Bharti Vidyapeeth. "

EPILOGUE:

107. Before parting with the matter, we may observe that we have decided the lis between the parties, but that by itself does not cure all the ills with which the system suffers and something more needs to be done on that front as well. It would be necessary to refer to the grievance voiced on behalf of the Appellants that admissions conducted even by an agency nominated by the State, under a state law or a central law may lack credibility. This concern has also been noticed by this Court in P.A. Inamdar. An astute and sagacious approach is also necessary to deal with the ground realities. This Court had earlier appointed committees headed by the retired High Court Judges in all the States to regulate the admissions and fee structure. This was a stopgap arrangement till suitable legislation was framed and once the admission process under a statutory law becomes operative, the grievance of all concerned on the subject of proper functioning of the regulatory mechanism will need to be properly addressed. It was brought to our notice that the Central Government itself had appointed a group of experts headed by Dr. Ranjit Roy Chaudhury vide notification dated July 07, 2014 to study the Indian Medical Council Act, 1956 and to make recommendations. The said Committee gave its report on September 25, 2014 suggesting reforms in the regulatory oversight of the medical profession by the Medical Council. The recommendations covered the subject of overseeing under graduate and post graduate medical education as well as other related issues. It was also pointed out that even the Parliamentary Standing Committee on Health and Family Welfare in its 92nd report on 'The functioning of Medical Council of India' presented to the Rajya Sabha and the Lok Sabha on March 08, 2016 has gone into the matter. There is perhaps urgent need to review the regulatory mechanism for other service oriented professions also. We do hope this issue will receive attention of concerned authorities, including the Law Commission, in due course.

"147. Another argument that has been put forth is that the power to enact laws laying down process of admission in universities etc. vests in both Central and State Governments under entry 25 of the concurrent list only. Under entry 25 of concurrent list and erstwhile entry 11 of State List, the State Government has enacted various

legislations that inter alia regulate admission process in various institutions. For instance, Jawaharlal Nehru Krishi Vishwavidyalaya Adhiniyam, Rajiv Gandhi Prodyogiki Vishwavidyalaya Adhiniyam, Rashtriya Vidhi Sansathan Vishwavidyalaya Adhiniyam etc. were established by the State Government in exercise of power under entry 25 of concurrent list. Similarly, the Central Government has also enacted various legislations relating to higher education under entry 25 of concurrent list pertaining to centrally funded universities such as Babasaheb Bhimrao Ambedkar University Act 1994, Maulana Azad National Urdu University Act, 1996, Indira Gandhi National Tribal University Act, 2007 etc. Central Government may have the power to regulate the admission process for centrally funded institutions like IITs, NIT, JIPMER etc. but not in respect of other institutions running in the State. "

"148. In view of the above discussion, it can be clearly laid down power of Union under entry 66 of Union List is limited to prescribing standards of higher education to bring about uniformity in the level of education imparted throughout the country. Thus, the scope of entry 66 must be construed limited to its actual sense of 'determining the standards of higher education' and not of laying down admission process. In no case is the State denuded of its power to legislate under Entry 25 of List III. More so, pertaining to the admission process in universities imparting higher education. "

167. Merit is the cumulative assessment of worth of any individual based on different screening methods. Ideally, there should be one common entrance test conducted by the State both for government colleges and for private unaided educational institutions to ensure efficacy, fairness and public confidence. As rightly contended by Mr. Purushendra Kaurav, Addl. Advocate General for the State of Madhya Pradesh appearing for AFRC, a common entrance test conducted by the State is more advantageous viz.: (i) having adhered to the time Schedule as laid down in Mridul Dhar case MANU/SC/0029/2005¹: (2005) 2 SCC 65; (ii) multiple centres of examination and counselling throughout the State and a single window system for admission; (iii) standard question papers, preservation of question papers and answer books, prevention of leakage of question papers and fair evaluation and (iv) minimal litigation. That apart, procedure for preparation of merit list, counselling and allotments to various colleges is subject to Right to Information Act and thus ensures fairness and transparency in the entire process.

168. Having regard to the prevailing conditions relating to admissions in private professional

educational institutions in the State of Madhya Pradesh, the Legislature in its wisdom has taken the view that merit based admissions can be ensured only through a common entrance test followed by centralized counselling either by the State or by an agency authorized by the State. In order to ensure rights of the applicants aspiring for medical courses Under Articles 14, 15 and 16 of the Constitution of India, legislature by the impugned legislation introduced the system of Common Entrance Test (CET) to secure merit based admission on a transparent basis. If private unaided educational institutions are given unfettered right to devise their own admission procedure and fee structure, it would lead to situation where it would impinge upon the "right to equality" of the students who aspire to take admissions in such educational institutions. Common Entrance Test by State or its agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being allotted to different institutions depending on the courses of study, the number of seats and other relevant factors. This would ensure twin objects: (i) fairness and transparency and (ii) merit apart from preventing mal-administration. Thus, having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb mal-practices, it would be permissible for the State to regulate admissions by providing a centralized and single window procedure. Holding such CET followed by centralized counselling or single window system regulating admissions does not cause any dent on the fundamental rights of the institutions in running the institution. While private educational institutions have a 'right of occupation' in running the educational institutions, equally they have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence. Rights of private educational institutions have to yield to the larger interest of the community.

169. By holding common entrance test and identifying meritorious candidates, the State is merely providing the merit list of the candidates prepared on the basis of a fair common entrance test. If the screening test is conducted on merit basis, no loss will be caused to the private educational institutions. There is neither restriction on the entry of the students in the sanctioned intake of the institutions nor on their right to collect fees from the students. The freedom

of private educational institutions to establish and run institution, impart education, recruit staff, take disciplinary action, admit students, participate in fixation of fees is in no way being abridged by the impugned legislation; it remains intact."

58. The short response affidavit filed on behalf of MCI was submitted during the course of the arguments by the learned Senior Counsel. The reply affidavit by the MCI extracting the judgments of the Hon'ble Supreme Court of India in Preethi Srivathsava case and further the binding character of the Regulation of the MCI inter alia through various pronouncements of the Hon'ble Supreme Court of India is extracted in paragraph 8 as under;

"It is further respectfully submitted that the Hon'ble Supreme Court has been pleased to reiterate the binding character of the Regulations of the Council, inter alia, through the following pronouncements:-

- (i).Dr. Narayana Sharma & Anr. Vs. Dr. Pankaj Lehar & Others (2000) 1 SCC 44.
- (ii).State of Punjab Vs. Dayanand Medical College (2001) 8 SCC 664.
- (iii).State of MP & Ors vs. Gopal D. Tirthani & Ors (2003) 7 SCC 83.
- (iv).Harish Verma & Ors Vs. Ajay Srivastava & Another- (2003) 8 SCC 69."

59. In paragraph 17 of the counter, the MCI reiterated the Regulation 9 (IV) of the aforesaid regulations. The entire counter mostly reiterates the pronouncement of the Hon'ble Supreme Court with regard to the importance of the MCI Regulation. In paragraph 30, the counter ended as extracted below;

"In light of the facts and submissions made hereinabove, it is submitted that as per the above quoted judgment passed by the Hon'ble Supreme Court in the case of Dinesh Singh Chauhan (supra) it is impermissible to have any reservation of seats in post graduate degree courses. The aforesaid fact and submissions have been for the kind consideration of this Hon'ble Court. It is prayed accordingly."

60. In support of merit list to be drawn by the State of Tamil Nadu by converting NEET marks from 100 to 90 and awarding 10 marks separately for experience is also secured deviation over the standards determined by the MCI Regulations. Sole object of the regulation of MCI is to maintain the standard of higher education, more specifically in Post Graduate Medical Courses in the Nation. On reading Clauses 16 and 17 under the Chapter IV merit list, creates a

separate special marks not in consonance with Regulation 9 (IV) of the MCI Regulation, 2000 to that extend the same is to be declared as void and discriminatory.

61. In respect of the drawal of merit list as per clause 16 of the Prospectus of the State, provides 90 marks for NEET exam plus 10 marks for experience. Conversion of NEET marks itself amounts to impingement of the MCI Regulations. State has no authority to impinge the provisions of the MCI Regulations. Pursuant to the Judgment of the Hon'ble Supreme Court of India in SUDHIR v. STATE OF KERALA & DINESH SINGH CHAUHAN. Thus, clause 16 of the prospectus is in violation of the scheme of preparation of merit list as contemplated under the MCI Regulation, 2000.

62. Clause 17(a) of the prospectus awards one mark for each completed year after the completion of CRRI (House Surgeon) shall be awarded as marks for experience for both service and non-service candidates to a maximum of 10 marks. This clause also encroaches the scope of maintenance of standards of education as determined in the MCI Regulation, 2000. For instance, a candidate who served 10 years as Doctor will automatically get 10 marks along with NEET Marks. A candidate who served for one year will get one mark. Such bonus mark sponsored at the sweet will of the State will certainly dilute the standards of higher education stipulated by Medical Council of India. Such an extraordinary bonus granted for merely putting service as Doctor without any condition certainly alien and not contemplated under the MCI Regulation, 2000. The basis on which such award of marks for all the candidates is not enumerated or a justifiable ground has been placed before this Court. Thus, clause 17(a) is also in violation of MCI Regulation.

63. Clause 17(b) of the prospectus awards one mark per year of service in rural areas, 2 marks per year of service in hilly and remote/difficult areas and 2 marks per year of service in any Government Hospitals, Primary Health Centres and Government Medical College Hospitals of Thiruvapur, Nagapattinam & Ramanathapuram Districts to the maximum of ten marks.

64. The logic behind the inclusion of Government Medical College Hospitals of Thiruvapur, Nagapattinam and Ramanathanpuram Districts remain unexplained by the State. In the absence of any convincing, justifiable reason, there is no scope for sustaining this nature of awardance of bonus marks in a clandestine manner. State is duty bound to justify the reason for awarding any incentives or bonus marks, barring the provisions contemplated under MCI Regulations, 2000. The scheme of awarding marks prescribed under the MCI Regulations are entirely different from the manner in which, the State of Tamil Nadu grants the incentive marks to the in-service candidates

served in rural, hilly & remote difficult areas.

65. Thus, the question arises whether the scheme of award of incentive marks in the State prospectus are well within the legal regime of the principles laid down by the Hon'ble Supreme Court of India. For instance, the scheme of prospectus of State of Tamil Nadu, if implemented will create discrimination amongst service and non-service candidates.

66. To quote, an in-service candidate under the Central quote secured 800 marks in NEET Examination, will get 69% aggregate, but, the same in-service candidate under the State Prospectus will get 63% aggregate. State has no authority to create such an anomalous situation by prescribing a new method of allotment of incentive marks to in-service candidates. The logic adopted by the State has no intelligible difference amongst the in-service and non-service candidates. Hence, the precedents laid down by the Hon'ble Supreme Court of India, in the case of DINESH SINGH CHAUHAN, has not been followed by the State of Tamil Nadu so also the MCI Regulations, 2000. The scheme of the prospectus of the State provides unfair advantage to the in-service candidates and thus creates disparity amongst in-service and non-service candidates.

67. *The doctrine of legitimate expectation mooted out by the learned Senior Counsel, cannot have any relevance with regard to facts on hand. The Regulation 9(IV) of MCI Regulations provides incentive marks to in-service candidates. What is in question is, the scheme under deviated method of granting incentive to in-service candidate in the State prospectus, is not falling in line with the scheme enunciated under the MCI Regulations, 2000.

68. Therefore, all in-service candidates are bound to get the benefit of incentive marks under Regulation 9(4) of MCI Regulations. Hence, the argument deserves rejection.

69. The clause enunciated, not only creates discrimination, but also creates institutional reservation. Therefore, this court is of the firm view that such creation, when the clause is in contravention to the segment prescribed through MCI Regulation is to be declared as ultra vires to the statutory scheme framed through regulations framed by the MCI.

70. Accepting the declaration to work in Rural/ Hilly/ remote / difficult areas, the State of Tamil Nadu issued G.O. Ms. 29, Health and Family Welfare Department (MCA-1) Department, dated 08.02.2017. Subsequently the Government issued G.O. Ms. 86 of Health and Family Welfare Department (MCA-1) Department, dated 23.03.2017, stating that the G.O. 29 issued earlier is kept in abeyance for the present. Accordingly, the remote / difficult / Hilly areas were notified in the Annexure to the

prospectus for the purpose of admission to the Post Graduate Course for the Academic Year 2017 -2018. Therefore, with regard to the notification required to be published by the State Government under Regulation 9 (IV) of Regulations 2000 is complied in the Annexure to prospectus. Hence, the notification with regard to the areas are not in dispute and the State Government is bound to follow in respect of notified areas for awarding incentive marks to in-service candidates in accord to Clause 9 (IV) of Regulations, 2000.

71. In view of the legal principles laid down by the Hon'ble Supreme Court of India in the related cases cited supra, in respect of the Medical Council of India, Post Graduate Medical Education Regulation, 2000, this Court is of the firm view that, though there is no prayer in the writ petition, this Court is inclined to mould the prayer in order to grant substantial relief to all concerned, to maintain uniformity amongst the candidates for determination of minimum standard of education for Post Graduate Degree \ Diploma courses in accordance with MCI Regulation, 2000.

Accordingly, the reliefs in these Writ Appeals are moulded as hereunder;

1. Clauses 16, 17 and 33(b) under "Chapter VI merit list" of the prospectus issued by the Government of Tamil Nadu are declared inconsistent / repugnant to Regulation 9 of the Post Graduate Medical Regulation, 2000 issued by the Medical Council of India and accordingly quashed.
2. The Government of Tamil Nadu is directed to formulate the procedure for admission process in accordance with Regulation 9 and 9(IV) of the Post Graduate Medical Regulation, 2000 issued by the Medical Council of India.
3. Accordingly, the Government of Tamil Nadu is directed to prepare merit rank list for admission to Post Graduate Degree/Diploma Courses in Tamil Government Medical Colleges, Government seats in self-financing colleges affiliated to Dr. MGR Medical University and Annamalai University for the Academic Year 2017-2018.
4. The Government of Tamil Nadu is directed to conclude the merit rank list as per the above directions and proceed with the admission process as per the time frame, already fixed.

In view of the above directions, all these Writ Appeals are dismissed. No order as to cost.

[K.K.S.J.,] [S.M.S.J.,]

03.05.2017

COMMON JUDGMENT

M.SATHYANARAYANAN, J.

These Writ Appeals are listed before this Court by way of Specially Ordered cases for the following reasons.

2. One Dr.Rajesh Wilson had filed W.P.No.6031 of 2017 on 03.03.2017 praying for issuance of a Writ of Mandamus directing the Director of Medical Education, Kilpauk, Chennai-600 010 and the Selection Committee, The Director of Medical Education, Kilpauk, Chennai-600 010, to implement the Regulation 9(IV) of Post Graduate Medical Education Regulations, 2000 as amended by adding 30% marks on the marks secured by him in the National Eligibility cum Entrance Test - Post Graduate [in short "NEET-PG"] while preparing the rank list for admission to Post Graduate Course in 50% reserved category for Government Servants for the academic year 2017-2018 by passing orders on his representation dated 24.02.2017. The said writ petition was entertained and pendency of the same, the Medical Council of India, New Delhi-110 077, has been impleaded as the fourth respondent in the said writ petition. Since the cut-off date for admission is on 07.05.2017, the writ petition was taken up for final disposal. The respondents in the writ petition did not file their counter affidavits. Arguments were advanced on behalf of the writ petitioner contending that proviso to Clause (IV) of Regulation 9 of the Post Grade Medical Education Regulations, 2000 has been added, vide notification dated 15.02.2012, with effect from 27.02.2012 and as per the same, the petitioner is entitled for 10% of the marks to be obtained to be added along with the marks he had obtained in NEET for every completed year of service and therefore, he is entitled for 30% of the marks to be obtained to be added with his NEET marks and therefore, ranking may be done accordingly. The petitioner, in this regard, has also submitted a representation to the second respondent to comply with the above said provisions and there was no response.

3. The Writ Petitioner has placed reliance upon the judgment rendered by the Hon'ble Supreme Court of India in State of Uttar Pradesh and Others v. Dinesh Singh Chauhan [2016 (9) SCC 749], wherein the scope of Regulation 9 of the Post Grade Medical Education Regulations, 2000 has been considered in detail and it has been held that Regulation 9 is a self-contained code regarding the procedure to be followed for admission to medical courses and it has been further held in the said decision that the State has no authority to enact any law, much less any executive instructions that may undermine the procedure for admission to Post Graduate Medical Courses enunciated by the Central Legislation and Regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution of India.

4. The learned Special Government Pleader appearing for the respondents 1 to 3 in the said writ petition contended that Regulation 9(IV) enables the State to give weightage in the marks as an incentive and therefore, relevant Clauses in the Prospectus for Post Graduate Medical Admission for the academic year 2017-2018 do not in any way undermine the said Regulation and by adopting the Principle of Harmonious Construction, the Regulations as well as the Prospectus can co-exist and the object of the same is to give incentive to doctors who are working in remote/difficult arrears and therefore, prayed for dismissal of this writ petition.

5. The learned Single Judge, after considering the rival submissions, held that Post Graduate Medical Education Regulations, 2000 formulated in exercise of the powers conferred under Section 33 read with Section 20 of the Indian Medical Council Act, 1956 with the sanction of the Central Government and hence, the State cannot adversely affect the standards laid down by the Centre and that apart, the Regulations are binding and the States cannot make any law which is in conflict with or adversely impinge upon the Regulations made by the MCI. The learned Judge further held that the State cannot have its own rationale to arrive at a different calculation in awarding of the weightage marks. The learned Judge, citing the said reasons, had disposed of the said writ petition, vide order dated 17.04.2017, directing the respondents 2 and 3 therein to follow the Regulations 9(4) of the Post Graduate Medical Education Regulations, 2000 by adding 30% on the marks secured by the petitioner in the NEET examination while preparing the ranking list for admission to the Post Graduate Course in 50% reserved category for Government servants for the academic year 2017-2018 and also made it clear that admissions can and ought to be made only on the basis of the above said Regulations.

6. The in-service candidates who are parties to the said writ petition, after obtaining leave, had filed W.A.Nos.453, 484, 490, 491, 498, 499, 506 and 527 of 2017 and moved before the Second Bench of this Court [Hon'ble Mr. Justice Huluvadi G.Ramesh and Hon'ble Mr. Justice RMT.Teeka Raman] and the Division Bench found that since the pleadings have not been completed, disposing of the matter involving complex issues at the stage of admission, would not be proper and directed the learned counsel for the parties to complete their pleadings at the earliest and they may seek for appropriate date for early hearing during vacation and granted liberty to the learned counsel for the parties to move the Hon'ble Chief Justice for hearing the matter during vacation and the parties are at liberty to move the Vacation Bench for early hearing and disposal of the matter. Accordingly, in the light of the urgency, especially with regard to the adherence of the time limit prescribed for completing the admission, the Registry has

placed the matter before the Hon'ble The Chief Justice and vide order dated 28.04.2017, the said Writ Appeals were directed to be listed before the Specially Constituted Bench consisting of the Hon'ble Mr.Justice K.K.Sasidharan and Hon'ble Mr.Justice S.M.Subramaniam.

7. The Writ Appeals were listed for hearing on 02.05.2017 and after hearing the submissions made by the respective learned counsel appearing for the parties, Judgments were reserved on 02.05.2017 and were pronounced on 03.05.2017.

8. The Hon'ble Mr. Justice K.K.Sasidharan, in the judgment dated 03.05.2017 found that MCI Regulations provide for 30% of the NEET marks as weightage by way of incentive marks and the State norms restricts the weightage marks at 10% and there is no dilution of the standards set by MCI by taking 90% of the marks secured by the candidate in NEET and 10% for rural service, calculated in the marks indicated in the Prospectus. The learned Judge further observed that two regulations have to be construed harmoniously to achieve the common object of encouraging service in remote and difficult areas and to award incentive marks for such service. The learned Judge further observed that there is absolutely no conflict between the Central Regulation and the State Policy on account of different criteria followed for awarding incentive marks and the method evolved by the State therefore, meet the Equality Test under Article 14 of the Constitution of India. The learned Judge has also considered the issue relating to reservation in favour of in-service candidates and found that the writ petitioner did not make a challenge to the legality and correctness of the Prospectus issued by the State of Tamil Nadu and challenge is made only to the method adopted by the State Government for awarding incentive marks and held that the question as to whether the State was correct in reserving 50% of the seats in each specialty and in each college for service candidates requires to be decided in an appropriate proceedings with opportunities to the parties to file counter affidavit. The learned Judge having found that the writ petition was filed only for the relief of Mandamus and therefore, it is not permissible to expand the scope of the related appeals and test the validity of all the Clauses in the Prospectus and felt that there is no need to consider the legality and correctness of the Prospectus fixing 50% each for the in-service candidates and the award of uniform marks for both service and non-service candidates for experience, in the present intra court appeals. The learned Judge further observed that 07.05.2017, being the cut off date prescribed by the Hon'ble Supreme Court of India for counselling, the questions regarding reservation for in-service candidates and award of incentive marks for experience for both the in-service and non-service candidates are kept open to be decided in appropriate proceedings. The learned Judge, citing the said reasons, had set aside the order dated 17.04.2017 made in W.P.No.6031 of 2017 passed in the writ

petition and moulded the relief by directing the Selection Committee, Directorate of Medical Education to consider the case of the petitioner in W.P.No.6031 of 2017 for awarding weightage marks in accordance with the method indicated in the Prospectus for the year 2017-2018.

9. The common judgment authored by the Hon'ble Mr. Justice K.K.Sasidharan was circulated to the Hon'ble Mr. Justice S.M.Subramaniam and the learned Judge respectfully disagreed with the views and conclusions and authored the dissenting judgment.

10. The Hon'ble Mr. Justice S.M.Subramaniam formulated the question "Whether the Prospectus issued by the State Government for admissions to Post Graduate Medical Courses is in contradiction or in consonance with the Regulations issued by MCI?" The learned Judge, after extracting Section 10(D) of the Indian Medical Council Act, 1956 and the Clauses in the Prospectus, held that any Prospectus and selection procedures notified by the State Government should be in accordance with the MCI Regulation and NEET marks awarded through common entrance examination cannot be altered or tinkered by the State and a separate procedure cannot be adopted for awarding incentive marks. The learned Judge further found that no reservation was granted for post graduate medical courses and 50% reservation was awarded only for post graduate diploma courses by virtue of Regulation 9(1)(b) of MCI Regulation and therefore, the Prospectus issued by the State of Tamil Nadu granting 50% reservation for in-service candidates for admission to post graduate medical courses are directly in violation of MCI Regulation. The learned Judge further observed that since no such reservation is permissible, as the reservation of granting 50% reservation for Post Graduate Diploma Course have different objectives and the same cannot be converted by the State for admission to the Post Graduate Courses also and Clause 33(b) of the Prospectus will not stand under the scrutiny of Articles 14 and 16 of the Constitution of India, in view of the fact that it creates a class within a class amongst the eligible candidates.

11. The learned Judge also taken note of the decision in Dinesh Singh Chauhan case (cited supra) and after extracting the relevant paragraphs, found that institutional reservation by the State is impermissible under the Constitution and the State has no authority to issue any such order, when the MCI Regulation itself is self-contained code and nothing under the regulation granting separate channel for admission to in-service candidates. The learned Judge also taken into consideration the judgment rendered by the Hon'ble Supreme Court of India in Sudhir v. State of Kerala [2015 (6) SCC 685] and noted that the Apex Court has taken a firm view on MCI Regulations, more particularly, admission to Post Graduate Medical Courses and held that any deviation or violation will result in

discrimination and will affect the uniformity in selection procedures and the whole object of NEET examination and prescription of regulation by MCI is to maintain uniformity in the standards of admission for postgraduate courses. The learned Judge, after taking note of the above cited decision, held that Prospectus issued by the State of Tamil Nadu creates a separate reservation for in-service candidates by allotting 50% of seats, converting NEET marks and by awarding 10 marks separately for in-service candidates which are in violation of MCI Regulations. The learned Judge also taken note of the fact that both for service and non-service candidates, the NEET marks are converted from 100 to 90 and therefore, an additional 10 marks for in-service candidates are awarded as per the Prospectus and this will also create discrimination between in-service and non-service candidates and as such, conversion by the State Government is impermissible under MCI Regulations.

12. The learned Judge has also considered the issue regarding repugnancy in respect of Article 254, 7th Schedule Entry 25 List III and the Prospectus and taken note of the judgment rendered by the Division Bench of this Court in the decision in *The Tamil Nadu Dr.M.G.R. Medical University v. P.Anand* [2011 (6) CTC 801] and held that the State Government cannot adopt same standard for admission to the Under Graduate Courses and Post Graduate Courses and any dilution of the standards in higher education will certainly have an adverse impact in the quality of medical education and it affects the diagnosis and nature of treatment provided to the general public. The learned Judge has also taken into consideration the judgment rendered by the High Court of Rajasthan in Civil Writ No.4005/2017 as well as the order dated 26.04.2017 made in W.P.No.7026 of 2017 [Punjab and Haryana High Court] and found that many States of our Country has recognized the importance of Regulation 9(IV) of MCI Regulations, 2000 and the State of Tamil Nadu is also has to fall in line with MCI Regulation without any clause in Prospectus issued in contravention with MCI Regulations, 2000.

13. The learned Judge also noted the decision in *Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others* [(2016) 7 SCC 353] rendered by a Constitution Bench of the Hon'ble Supreme Court of India and found that provision of separate special marks is not in consonance with Regulation 9(IV) of the MCI Regulations, 2000 to that extent the same is to be declared as void and discriminatory. The learned Judge further found that the logic behind the inclusion of Government Medical College Hospitals of Thiruvavur, Nagapattinam and Ramanathanapuram Districts remain unexplained by the State and in the absence of any convincing justifiable reason, there is no scope for sustaining this nature of awareness of bonus marks in a clandestine manner and found that "The Scheme of

awarding marks prescribed under the MCI Regulations are entirely different from the manner in which, the State Government grants incentive marks to the in-service candidate served in rural, hilly and remote/difficult areas". The learned Judge found that though there is no prayer in the writ petition, this Court is inclined to mould the prayer in order to grant substantial relief to all concerned, to maintain uniformity amongst the candidates for determination of minimum standard of education for Post Graduate Degree / Diploma Courses in accordance with MCI Regulation, 2000.

14. It is relevant to extract the reliefs moulded in the Writ Appeals:

- (1) Clause 16,17 and 33(b) under "Chapter VI merit list" of the Prospectus issued by the Government of Tamil Nadu are declared inconsistent/repugnant to Regulation 9 of the Post Graduate Medical Regulation, 2000 issued by the Medical Council of India and accordingly quashed.
- (2) The Government of Tamil Nadu is directed to formulate the procedure for admission process in accordance with Regulation 9 and 9(IV) of the Post Graduate Medical Regulation, 2000 issued by the Medical Council of India.
- (3) Accordingly, the Government of Tamil Nadu is directed to prepare merit rank list for admission to Post Graduate Degree/Diploma Courses in Tamil Government Medical Colleges, Government seats in self-financing colleges affiliated to Dr. MGR Medical University and Annamalai University for the Academic Year 2017-2018.
- (4) The Government of Tamil Nadu is directed to conclude the merit rank list as per the above directions and proceed with the admission process as per the time frame, already fixed.

The learned Judge, citing the said reasons, has dismissed the Writ Appeals, vide common judgment dated 03.05.2017.

15. The Registry, in the light of the divergent views expressed by the learned Judges, had placed a note before the Hon'ble Chief Justice as to the posting of these Writ Appeals and vide orders dated 03.05.2017, all the Writ Appeals are listed before this Court [M.Sathyannarayanan, J.]. In the light of the urgency, especially with regard to the cut off date prescribed by the Hon'ble Supreme Court of India expires on 07.05.2017, on the very next day on 04.05.2017, all the Writ

Appeals are listed for hearing.

16. It is relevant to extract Clause No.36 of the Amended Letters Patent of this Court:

"36. Single Judges and Division Courts.- And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras. In the exercise of its original or appellate jurisdiction, may be performed by any judge, or by any Division Court thereof, appointed or constituted for such purpose and if such Division Court is imposed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided [they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case included who those first heard it.]"

17. In *Minor Senthilkumar v. The State of Tamil Nadu* [(1991) 1 L.W. 113, 161 (DB)], it has been observed that failure to record the points of difference between the judges of a Division Bench will not invalidate the reference to third judge.

18. In *All India Anna Dravida Munnetra Kazhagam v. State Election Commissioner* [(2007) 2 MLJ 129, 214 paragraph 182], it has been held that where the specific point on which the difference has arisen has not been recorded, the difference as apparent from the discussions and conclusions of the two differing Judges should be culled out and decided on that basis without returning the matter for recording the difference.

19. A perusal of the orders passed by the learned Judges in these Writ Appeals did not indicate the point of difference and that a specific point on which difference has arisen has also not been recorded.

20. The Hon'ble Mr. Justice K.K. Sasidharan has held the underlining object to award incentive marks for the doctors who have served in the notified area and give weightage to their experience of the MCI Regulations and the State Norms (Prospectus) have to be construed harmoniously to achieve the common object of encouraging such service. The learned Judge has also felt that there is no conflict between the Central Regulation and State Policy on account of different criteria followed for awarding incentive marks and the said method would also meet the Equality Test under Article 14 of the Constitution

of India. The learned Judge further held that in the absence of challenge to the Prospectus, the correctness with regard to reservation of 50% of the seats in each specialty and in each college for service candidates requires to be decided in an appropriate proceedings with opportunities to the parties to file counter and the Court is not expected to travel beyond the scope of the Writ Petition and should confine its decisions to the matter in issue.

21. The Hon'ble Mr. Justice S.M. Subramaniam, by placing reliance upon Dinesh Singh Chauhan case (cited supra), found that the Scheme of the Prospectus of the State provides unfair advantage to the in-service candidates and thus, creates disparity amongst in-service and non-service candidates and the scheme under deviated method of granting incentive to in-service candidate in the Prospectus, is not falling in line with the Scheme enunciated under the MCI Regulations, 2000.

22. In the decision in All India Anna Dravida Munnetra Kazhagam's case (cited supra), it is held that it is not within the scope of reference for the 3rd Judge to travel beyond the difference of opinion between the two judges.

23. Similarly, the appellant in W.A.No.527 of 2017 prayed for a appropriate direction directing the respondents 2 to 4 for award of 30% of marks while preparing the rank list for the service candidates as specified in the Prospectus issued for the year 2017-2018.

24. Mrs.G.Thilagavathi, learned Senior Counsel assisted by Mrs.Bhavani Subbaroyan and Mr.K.V.Sajeey Kumar, learned counsel appearing for the appellants in W.A.Nos.506 & 527 of 2017 would submit that though one mark has been prescribed for the candidates serving in rural areas, the places have not been identified and in the absence of the same, the petitioners, who are working in the rural areas, are not likely to get one mark.

25. In response to the said submission, Mr.T.N.Rajagopalan, learned Special Government Pleader, on instructions, would submit that if the petitioners are serving in Primary Health Centres in the rural areas, their claim for award of one mark will be considered and the said submission, on instructions, is placed on record.

26. In view of the prayer sought for by the appellants in the writ appeals and in the light of their affidavits dated 04.05.2017, which travels beyond the scope of reference to this Court on account of difference of opinion between the two Hon'ble Judges, counter affidavits are yet to be filed by the respondents including the official respondents, this Court is not inclined to take up the said matters viz., W.A.Nos.506 & 527

of 2016 and the said Writ Appeals are to be de-linked.

27. Mr.C.Manishankar, learned Additional Advocate General assisted by Mr.T.N.Rajagopalan, learned Special Government Pleader appearing for the State Government in all these writ appeals has invited the attention of this Court to the orders passed by the learned Judges as well as the typed set of documents and would submit that in the Prospectus for Post Graduate Admissions for the year 2017-2018, inclusion of 50% seats reserved for All India Quota at 50% of seats in each specialty in Post Graduate Courses is allocated to the doctors serving in Government Hospitals with stringent condition that on selection, they are required to serve in the Government till they reach superannuation and they have to execute a bond for a sum of Rs.40 lakhs and the said stringent condition has been imposed solely with the object of providing quality and timely health care to the people of the State, especially to those living in rural, remote and hilly arrears. It is the further submission of the learned Additional Advocate General that relevant Clauses in the Prospectus are in tune with Regulation 9 (IV) as well as proviso to Post Graduate Regulations, 2000 and though the proviso provides for awarding incentive marks at the rate of 10% of the marks obtained for each years of service in the remote and/or difficult areas and Clause (IV) of Regulation 9 provides experience marks for all candidates upto a maximum of 10 and it is also not in dispute that the reservation policy of an individual State cannot be tinkered and the States are also entitled to impose conditions to State quota seats for Under Graduate and Post Graduate levels. It is the further submission of the learned Additional Advocate General that as per the Prospectus 90 marks for entrance examination and 10 marks for experience have been fixed taking into consideration the situation and ground reality prevailing in the State and if that procedure/system is given a go-by, it is extremely difficult to get doctors with qualifications and experience to serve in rural/remote/hilly/difficult areas. It is also submitted by the learned Additional Advocate General that doctors who are serving in those areas are having legitimate expectation to get incentive marks so as to enable them to get admission in Post Graduate Courses and any deviation would definitely shatter their expectations and taking into consideration the humanitarian service rendered to the people residing in those areas, the State thought fit to encourage those class in the Prospectus and prays for setting aside the impugned order passed in the writ petition and also to uphold the reasons assigned by the Hon'ble Mr.Justice K.K.Sasidharan, in the common judgment dated 03.05.2017.

28. Mr.P.Wilson, learned Senior Counsel appearing for the appellants in WA.Nos.498 and 499/2017, had formulated the following points for consideration:-

"[1]Whether the Writ Petition is

maintainable without challenging the NEET and State Prospectus?

[2]Whether the writ petition is maintainable without impleading the necessary party, viz., National Board of Examinations which is the designated authority under section 10-D of the Medical Council of India Act?

[3]Whether a candidate who has participated in the Written Test accepting the Prospectus is entitled to seek from the Court contrary to the Prospectus?

[4]Whether the impugned Judgment is right in awarding 30% of incentive marks to the p who claims to have joined Government Service and served in a hilly area which category is not contemplated under Regulation 9[4] Proviso?

[5]Is not the Medical Council of India having approved the NEET-PG Examination Prospectus issued by National Board of Examination estopped from taking a contrary stand to that of Prospectus?

[6]When the State with Constitutional goal of improving public health has extended a promise to the doctors to award incentive marks, will not the impugned judgment denude the said power and frustrate its constitutional obligations?

[7]Whether the Appellant doctors who having executed a bond and joined the services after accepting the promise the promise of state are entitled to experience and incentive marks by virtue of principles of legitimate expectation?

[8]Whether the State by virtue of insertion of Regulation 9-A has power to regulate the admission and counselling by drawing a merit list on the basis of marks set out in State Prospectus and NEET exams?

[9]Whether awarding of experience marks for all MBBS candidates and incentive marks for in-service candidates by State as contemplated in G.O.Ms.NO.704, Health and Family Welfare Department, dated 27.03.2017 while drawing the merits list is well within the power of the State under Entry 25 List III and does not reduce the standards of medical education and therefore, Regulation 9[4] Proviso which is illustrative and not exhaustive has to be read harmoniously?

[10]Whether after insertion of section 10-D by Amendment Act 39 of 2015, the Medical Council of India is not empowered to prescribe the terms of Prospectus including the conduct of uniform

entrance examination?

[11]Whether the Regulations 9[4] Proviso circumscribes the power of the State Government in awarding experience and incentive marks for the students and bar the State to lay down any additional categories pursuant to its concurrent power under Entry 25 List III?

[12]Whether the impugned Judgment which has not taken note of the insertion of Section 10-D of Indian Medical Council Act, 9-A Post Graduate Medical Examination Regulations 2000, the ratio laid down by the Constitutional Bench in the Modern Dental College [2016 [7] SCC 353] upholding the power of the State Government to frame admission procedures under Entry 25, List III, is liable to be set aside?

29. The learned Senior Counsel appearing for the appellants has invited the attention of this Court to the Information Bulletin for National Eligibility cum Entrance Test [Post Graduate] for admission to MD/MS/Post Graduate Diploma Courses 2017 conducted by the National Board of Examinations and would submit that as per the Flow Chart for NEET-PG 2017 for admission to Post Graduate Courses available at inner page No.9 and would submit that in respect of All India 50% no service candidates will be considered and in respect of State Quota seats, Government seats are owned and controlled by the State Government and admission process is to be undertaken and completed by the concerned designated Counselling Authority of Private Colleges/Institutions/Institutes/Universities/Deemed Universities using NEET-PG Courses and as per the applicable Regulations and / or their eligibility criteria, Reservation policy etc. In the light of the same, the relevant clauses in the Prospectus issued by the fourth respondent for the academic year 2017-18, prescribing the method of marks subject to the maximum of 10, is perfectly in order.

30. The learned Senior Counsel appearing for the appellants would submit that it is also ensured that persons who are selected to Post Graduate Degree shall execute a bond for a sum of Rs.40 Lakhs with two sureties, two of which should be permanent Government servants in the same or higher rank as that of the candidate and one surety should be the parent of the candidate and also shall furnish an undertaking that they will serve in Government till their superannuation and the incentive marks as well as the stringent condition has been imposed with a view to benefit the people of Tamil Nadu, who are approaching the Government Hospitals/Primary Health Centres for treatment and more particularly, to the advantage of the people living in hill / remote / rural / difficult areas and the said laudable object is to be appreciated.

31. It is the further submission of the learned Senior Counsel appearing for the appellants in WA.Nos.498 & 499/2017 that even as per the above cited Regulations read with Proviso, remote / hill /rural / difficult areas especially, defined by the State Government / competent authority from time to time and much prior to the introduction of the said proviso during the year 2012, the State Government had identified remote / hill / rural / difficult areas and it was also taken into consideration by the Hon'ble Supreme Court of India reported in 2012 [8] SCC 203 [Sathyabrata Sahoo Vs. State of Orissa], and in the said matter, validity of Clause 11.2 of the Prospectus for selection of candidates in the Government Medical College of Orissa, came to be challenged on the ground that additional weightage for candidates who are employees of Government of Orissa, and their occupation in rural/tribal/backward areas.

32. The learned Senior Counsel appearing for the appellants would submit that admittedly, the Prospectus has not been put to challenge and 10 marks provided in the Prospectus as an incentive is less than the marks prescribed in NEET and the learned Judge [Hon'ble Mr. Justice K.K.Sasidharan] has taken into consideration the noble object of encouraging the doctors serving in rural areas, had applied the Principle of Harmonious Construction and found that the Regulations as well as the proviso and the Prospectus can co-exist and since the time limit prescribed for PG Medical courses expires on 07.05.2017, relevant clauses in the Prospectus ought not to have been quashed. The learned Senior Counsel has also adopted the arguments of the learned Additional Advocate General as to the legitimate expectation on the part of the appellants to get incentive marks for having served in hill / rural / remote / difficult areas and prays for sustainment of the common judgment passed by the Hon'ble Mr. Justice K.K.Sasidharan.

33. The learned Senior Counsel appearing for the appellants, in support of his submissions, placed reliance upon the following decisions:-

- (i) Dr.R.Murali v. Dr.R.Kamalakaran and 3 Others [1999 (III) CTC675]
- (ii) Dr.M.Vennila v. Tamil Nadu Public Service Commission [2005 (3) CTC 449]
- (iii) State of Uttar Pradesh and Others v. Dinesh Singh Chauhan [(2016) 9 SCC 749]
- (iv) Dr. Preeti Srivatsava and another v. State of M.P. and Others [(1999) 7 SCC 120]
- (v) State of Punjab v. Dayanand Medical College and Hospital and Others [(2001) 8 SCC 664]
- (vi) Dr.Snehalatha Patnaik and Others v. State of Orissa and Others [(1992) 2 SCC 26]
- (vii) Satyabrata Sahoo and Others v. State of Orissa and Others [(2012) 8 SCC 203]
- (viii) M.S.Vijay Anand v. State of Tamil Nadu Rep. by its

- Secretary [MANU/TN/2539/2009]
- (ix) Yatinkumar Jashbhai Patel and Otherws v. State of Gujarat and Others [MANU/GJ/0252/2017]
- (x) Aarti Dhatwalia and Others v. State of H.P. and Others [MANU/GP/0178/2017]
- (xi) Dr.M.Ashiq Nihmathullah Vs Government of Tamil Nadu [2005 [5] CTC 26]
- (xii) Minor S. Janani Vs. State of Tamil Nadu [2006 [3] L.W.795]

34. Mr.G.Sankaran, learned counsel appearing for the appellants in WA.No.490/2017 has drawn the attention of this Court to the decision in State of Uttar Pradesh and Others v. Dinesh Singh Chauhan [2016 (9) SCC 749] and would submit that the proviso added to Regulation to 9[2][d] in terms of the Gazette Notification dated 19.12.2009 was the subject matter of consideration and question arose as to the challenge made to the Government Orders passed by the State of Uttar Pradesh with regard to the imposition of condition of working in three years in rural/difficult areas and in the context of the matter, the Hon'ble Supreme Court of India had observed that Regulation 9 is a self contained Code and as such, the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to post graduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution of India. It is the further submission of the learned Counsel appearing for the appellants that the relevant clauses in the Prospectus giving weightage marks in any way override/undermine the said Regulation as well as the proviso and though the proviso says that incentive marks at the rate of 10% for marks obtained for each years of service for serving in remote/rural/difficult areas upto the maximum of 30% marks obtained in NEET, the State Government thought fit to prescribe the maximum limit of 10% marks only and if the Principle of Harmonious Construction is adopted, the proviso as well as the relevant clauses in the Prospects can co-exist as both are framed with the noble and laudable object of encouraging doctors to serve in those areas.

35. It is also contended by the learned counsel appearing for the appellant that the provision for awarding weightage marks in respect of doctors serving in the above said areas is in vogue for quite long time and very recently, only in the year 2000, the Medical Council of India thought fit to incorporate the provision for awarding weightage marks for rendering service in remote/difficult areas and it has been modified, vide Notification of the Medical Council of India dated 15.02.2012, with effect from 27.02.2012. The learned counsel appearing for the appellant has also drawn the attention of this Court to Section 10(D) of the Indian Medical Council Act, 1956 and would submit that the said provision came to be inserted by Act 39 of

2016 with effect from 24.05.2016 that too after the proviso to Regulation 9(IV) of the Post Graduate Medical Education, 2000 and in the light of the flow chart given by the National Board of Examination, who is the authority to conduct NEET examinations, the Prospectus cannot be found fault with and would further add that in the dissenting verdict, certain factual errors also occurred and the learned Judge, in the absence of challenge to the Prospectus, ought not to have moulded the relief and prays for setting aside the order passed in the writ petition and confirming the verdict of the Hon'ble Mr. Justice K.K.Sasidharan.

36. It is to be noted at this juncture that after passing of the orders in the writ petition, the respective learned counsel appearing for the appellants moved the Second Bench of this Court for early hearing and vide orders dated 27.04.2017, this Court directed the learned counsel for the parties to complete their pleadings at the earliest and they may seek the appropriate date for early hearing during vacation and granted liberty to the learned counsel for the parties to move the Hon'ble Chief Justice for hearing the matter during vacation and the parties are at liberty to move the Vacation Bench for early hearing and disposal of the matter.

37. The appellants in W.A.No.484 of 2017, who are the respondents 1 to 3 in W.P.No.6031 of 2017, had filed the affidavit and it was sworn to by the first appellant. It is stated in the said affidavit that for the academic year 2017-2018, the Tamil Nadu Legislative Assembly had passed two separate Bills to enable continuance of State Policy for Under Graduate/Post Graduate admission which are awarded the assent of the President of India and prior to that, the Union Minister for Health and Family Welfare in his letter addressed to the Hon'ble Chief Minister of Tamil Nadu dated 08.09.2016 had given an assurance that States may impose conditions as they deem fit, on State quota seats at UG/PG level and based on the said assurance, the State Government had issued the Prospectus for the Post Graduate Medical and Dental courses, following NEET-PG entrance examination and continuing the existing policy of reserving 50 % of State Quota or Government seats for the candidates in Government seats with the preferential marking system followed in earlier years. In para 8 of the said affidavit dated 02.05.2017, the appellants in W.A.No.484 of 2017 took a stand that Clause 9(IV) of the Post Graduate Medical Education Regulations, 2000, providing incentives for service candidates has not been implemented for All India quota seats and despite the amendments made to the Regulations made in February 2012, they have not been insisted upon till now and the State's Admission policy has not been affected in the light of the discretion to the State Government.

38. The appellants in W.A.No.484 of 2017 also placed reliance upon the judgment rendered by the Hon'ble Supreme Court of India in Modern Dental College and Research Centre v. The State of Madhya Pradesh [(2016) 7 SCC 353] with regard to Entry 656 in List I wherein one of the Hon'ble Judge, namely Hon'ble Mrs.Justice R.Banumathi had observed among other things that only the State legislation can create equal level playing field for the students who are coming out from the State Board and other streams. It is further averred in the affidavit that despite investing huge amount of State funds and considering that 50 percent of State Government seats are surrendered to All India Quota, in effect the in-service reservation is only for 25 per cent of the overall number of seats in Post Graduate Degree and Diploma Medical Courses and the impugned order passed in the writ petition did not refer to the existing Government policy and practice and without any opportunity to any stakeholder to present the overall picture and without reference to the huge impact it is going to have on provision on health services in the Government Sector in all of the State. The appellants in W.A.No.484 of 2017 also took a stand that in the absence of any challenge to the Prospectus, the procedure as outlined in the Prospectus alone should be upheld, as any change midway through the process will not only be arbitrary but it will benefit only a selected few disproportionately without reference to the overall admission policy of the State Government, which has a sound rationale and therefore, prayed for upholding the legality of the Prospectus.

39. The impleaded party/fourth respondent in the writ petition namely, the Medical Council of India had filed short response affidavit dated 01.05.2017 and they took a stand that in exercise of power conferred under 33 of the Indian Medical Council Act, 1956, Post Graduate Medical Education Regulations, 2000, came to be framed and Regulation 9 deals with the Regulation for Post Graduate Courses and those Statutory Regulations have to be held to be binding and mandatory by the Hon'ble Supreme Court of India. It is further stated that the benefit of proviso to Regulation 9 [IV] shall only be available to such in-service candidates who have secured the minimum marks at the respective percentiles as provided in Regulation 9[III] and have qualified the NEET-PG test and the weightage in marks as an incentive for each year of service in remote and/or difficult areas could be granted to the deserving in-service candidates only after they have secured the minimum marks at the respective percentiles as provided under Regulation 9[III] and cannot be provided in order to qualify the NEET-PG Test. Insofar as the 50% of the seats reserved for Medical Officers in the Government service is concerned, it is the stand of the Medical Council of India that it is available in respect of Medical Officers in the Government service who have served for atleast three years in remote and/or difficult areas and that after acquiring the PG Diploma, the Medical Officers shall serve

for two more years in remote and/or difficult areas as defined by the State Government / Competent Authority from time to time. The Medical Council of India would further aver that in the light of the judgment rendered by the Hon'ble Supreme Court of India in Sudhir v. State of Kerala [2015 (6) SCC 685] wherein it has been held that Regulation 9 is a complete Code itself for determining the academic merit of the candidates seeking admission in Post Graduate Courses. However, it has been given a complete go-by by the Prospectus and similar view was also taken in Dinesh Singh Chauhan's case [cited supra], and as such, it is impermissible to have reservation of seats in any Post Graduate Degree Courses except as indicated in the proviso to Regulation 9[IV] of the Post Graduate Medical Education Regulations, 2000.

40. Mr.Vijaya Narayanan, learned Senior Counsel assisted by Mr.V.P.Raman, learned Standing Counsel appearing for MCI/second respondent in W.A.No.484 of 2017 would submit that the issue involved in this writ appeal is no longer res integra for the reason that it has been considered in detail and in extenso in the two decisions rendered by the Hon'ble Supreme Court of India in Sudhir v. State of Kerala [2015 (6) SCC 685] and State of Uttar Pradesh and Others v. Dinesh Singh Chauhan [2016 (9) SCC 749]. The learned Senior Counsel appearing for the second respondent would contend that Clause Nos.16, 17 and 33 of the Prospectus issued by the appellant for Post Graduate Diploma and Degree Courses for the academic year 2017-2018 totally undermines the statutory provisions and submitted that Subordinate Legislation of the Indian Medical Council Act, 1956, namely Post Graduate Medical Education Regulations, 2000 was framed in exercise of power conferred under Section 33 r/w. 20 of the said Act which came into being with the previous sanction of the Central Government. The learned Senior Counsel appearing for the MCI/second respondent has drawn the attention of this Court to the said Clause in the Prospectus and would submit that as per the proviso to Regulation 9(IV) of Post Graduate Medical Regulation, 2000, while determining the merits of candidates, incentive marks at the rate of 10% for marks obtained for each years of service for serving in remote/rural/difficult areas upto the maximum of 30% marks obtained in NEET, especially defined by the State Government / competent authority from time to time. As per the said proviso, there cannot be any reservation for in-service candidates as contemplated in the Prospectus and marks cannot be awarded for each year completion of CRR and the pattern of awarding marks is also not left to the discretion of the State Government/competent authority and Clause Nos.16 and 17 of the Prospectus runs contra to the said Regulations. It is the further submission learned Senior Counsel appearing for the MCI that proviso gives discretion to the State Government to define remote/difficult areas and whereas in the Prospectus it has been further classified as rural/hilly/remote/difficult areas and annexures containing the

names of the area have also been published and in the light of the time constraint fixed for completion of NEET on 07.05.2017, MCI is not expressing any opinion for the present and the non-identification of the rural areas is the subject matter of challenge in another set of writ appeals.

41. The learned Senior Counsel appearing for the MCI has invited the attention of this Court to Clause 33 of the said Prospectus and would submit that the said Clause also overrides the statutory provisions and in fact, gone to the extent of undermining the statutory powers vested with the Medical Council of India and though the Hon'ble Supreme Court of India in very many judgments had defined the powers of the MCI in respect of medical education, the State Government continues to ignore the same and picture is given that as if it is acting on sentiments. Insofar as the maintainability of the Writ Petition, without making challenge to the relevant clauses in the Prospectus, it is the submission of the learned Senior Counsel appearing for the MCI that the statutory and mandatory provisions of the Indian Medical Council Act are being violated by impugny by some of the State Governments and it is impossible for the MCI to make a challenge to the said violations, which may be in the form of Legislations/Government Orders/Executive Instructions and invited the attention of this Court to the decisions in Bharathidasan University and Another v. All India Council for Technical Education and Others [(2001) 8 SCC 676] and Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and Another [(2016) 3 SCC 643] and would submit that when the Regulations traverse beyond the Legislation, the Courts have to ignore it when the question of their enforcement arises and it is not necessary to challenge the vires or otherwise of the same.

42. The learned Senior Counsel appearing for the MCI/second respondent has also drawn the attention of this Court to paras 5, 40, 41, 42 and 44 of the common judgment delivered by Hon'ble Mr. Justice K.K. Sasidharan and would submit that the reasons assigned in the said judgment are contrary to the decisions of the Hon'ble Supreme Court of India in Sudhir's case and Dinesh Singh Chauhan's case (cited supra) and harmonizing the Legislations and the Government Orders does not arise at all for the reason that repugnancy can be only in respect of the provisions in the same Act or different Act and in the case on hand, admittedly, the Prospectus came to be framed on the basis of the Government Order which does not have the force of law.

43. The learned Senior Counsel appearing for the MCI meeting out the submission made by Mr. P. Wilson, learned Senior Counsel appearing for the appellants in W.A.Nos.498 and 499 of 2017, would submit that with regard to the impracticality in the manner in which the marks will be awarded in NEET, has also drawn the attention of this Court to para 35 of the Dinesh Singh

Chauhan's case wherein the mode of awarding marks in NEET has also been discussed and hence, there may not be apprehension on the part of the candidates participating in the said test and would further add that in fact NEET gives level playing field to in-service as well as non-service candidates and even to fresh graduates as it is moulded in a scientific and realistic manner. Lastly it is submitted by the learned Senior Counsel appearing for the MCI/second respondent that the reasons assigned in the judgment delivered by the Hon'ble Mr. Justice S.M. Subramaniam are in consonance with the above said decisions of the Hon'ble Supreme Court of India as well as the provisions of the Indian Medical Council Act, 1956 and Post Graduate Medical Education Regulation, 2000 and therefore, prays for confirming the order passed in the writ petition.

44. Mr. G. Justin, learned counsel appearing for the first respondent/writ petitioner would submit that prior to the issuance of the Prospectus, the writ petition was filed and pendency of the same, the first appellant, in exercise of powers conferred under Article 162 of the Constitution of India, has passed a Government Order, based on which the Prospectus came to be formulated and since it ignores the above cited decisions of the Hon'ble Supreme Court of India as well as the statutory provisions, it is to be brushed aside and hence, there is no necessity on the part of the first respondent/writ petitioner to make a challenge to the relevant clauses in the Prospectus. The learned counsel appearing for the first respondent/writ petitioner would contend that since the appellants in W.A.No.484 of 2017/respondents 1 to 3 in the writ petition had failed to follow the statutory provisions, rather ignored it, a Writ of Mandamus was rightly filed to enforce the statutory Regulations and on that ground also, the writ petition is maintainable. The learned counsel appearing for the first respondent/writ petitioner, in support of his submissions, has placed reliance upon the decisions in (2012) 7 SCC 433 [Priya Gupta V. State of Chhattisgarh and others] ; (2012) 7 SCC 389 [Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others] ; and [2011] 3 SCC 617 [Chowdhury Navin Hemabhai and others Vs. State of Gujarat and others].

45. Mr. P. Wilson, learned Senior Counsel and Mr. G. Sankaran learned counsel appearing for the appellants in the respective Writ Appeals reiterated their submissions and it is the primordial submission of Mr. P. Wilson, learned Senior Counsel appearing for the appellants in W.A.Nos.498 and 499 of 2017 that in the light of the judgment rendered in Modern Dental College and Research Centre's case (cited supra), the Government Order is having the force of law and the Prospectus came to be issued on that basis is sustainable and since the State Government with the laudable object of providing medical service to the people residing in remote/hill/difficult area and awarded incentive marks for quite some time and in respect of the current academic

session also, it has been indicated so and all of a sudden, they should not be deprived of the benefits of the said proviso to Regulation 9(IV) of the Post Graduate Medical Education Regulations, 2000.

46. Mr.G.Sankaran, learned Senior Counsel appearing for the appellants would contend that insofar as the candidates in Government service in above said areas, the appellants in W.A.No.484 of 2017 may be directed to follow the annexure given to the Prospectus in letter and spirit and in the next academic year they may revamp/re-issue the same.

47. This Court paid its anxious consideration and best attention to the submissions made by the respective learned Senior Counsels and the learned counsels appearing for either parties and scanned through the materials placed before it in the form of typed set of documents and also considered the relevant decisions relied on in support of the said submissions.

48. This Court has already pointed out in the earlier paragraphs that the first respondent in these writ appeals, viz., Dr.Rajesh Wilson had filed WP.No.6301/2017 on 03.03.2017 and it came to be disposed of on 17.04.2017 and pendency of the same, the Medical Council of India was Suo motu impleaded as the fourth respondent. It appears that the respondents 1 to 3 in the said writ petition, who are the appellants in WA.No.484/2017, did not file their counter and arguments were advanced based on the decision reported in 2016 [9] SCC 745 [Dinesh Singh Chauhan's case [cited supra]. The in-service candidates, who are aggrieved by the said order after obtaining leave, filed these writ appeals and fresh points were urged and a Division Bench of this Court, which heard all the appeals by way of "Specially Ordered Cases", given a split verdict and therefore, it is listed before this Court by way of a Reference as per the orders passed by the Hon'ble The Chief Justice.

49. The respective learned Senior Counsels and the learned Counsels for the parties have also raised fresh grounds and new points and therefore, this Court is constrained to consider the same and hence, it may have to give some more findings than those given by the learned Judges in their judgments.

50. The contentions put forth is classified as follows:-

- [a] Maintainability of the Writ Petition
- [b] Repugnancy
- [c] Indian Medical Council Act, 1956 and Post Graduate Medical Education Regulations, 2000 framed under Section 33 read with section 20 of the Act.
- [d] Identification of remote and difficult areas.

Contention-[a]

51. The writ petition was filed by the first respondent for issuance of a writ of mandamus to implement Regulation 9[IV] of the Post Graduate Medical Education and Regulations, 2000 and after entertainment of the said writ petition, in pursuant to the Government Order, the Prospectus for admission of students to Post Graduate Diploma and Degree courses for the academic year 2017-2018 came to be formulated. It is the primordial submission of Mr.P.Wilson, learned Senior Counsel appearing for the appellants in WA.Nos.498, 499 and 537 to 546/2017 that in the absence of challenge to the relevant impugned Clauses in the Prospectus, the writ petition is per se not maintainable.

52. The 1st respondent / writ petitioner seeks the implementation of a statutory regulation framed under the Indian Medical Council Act, 1956 [Central Act 102 of 1956] and the appellants / respondents 1 to 3 in the writ petition in Ground No. [J] in WA.No.484/2017 raised the ground that "it is submitted that the Hon'ble Judge failed to note that if the Regulation 9 [IV] of the Post Graduate Medical Education and Regulation, 2000 as amended, is followed, the objective of providing quality health care to the rural and needy people, would be defeated."

53. In the said Writ Appeal, the first appellant / first respondent in the writ petition, took a stand that the word "may" in the proviso to Regulation 9 [IV] gives them discretion and thus, from the above said ground, the attitude exhibited by the appellants is to not to follow the said Regulation. It is a well settled position of law that the State as well as its Instrumentalities are expected to abide and follow the rule of law. The first respondent / writ petitioner is seeking a Writ of Mandamus, merely praying for implementation of the said statutory provision.

54. In the decision reported in 2001 [8] SCC 676 [Bharathidasan University and another Vs. All India Council for Technical Education and others], obtaining of the approval by the said University under the provisions of the All India Council for Technical Education Act, 1987 [AICTE Act] came up for consideration and it was the stand of the University that it need not obtain such a permission and the said stand was repealed. In paragraph 14 of the above cited judgment, it is observed that "consequently when the power to make regulations is confined to certain limits and made to flow in a well defined canal within the stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the Courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly, when the party in sufferance is a respondent to the lis are proceedings cannot confer any further sanctity or

authority and validity which is shown and found to obviously patently lack."

55. In the judgment reported in 2016 [3] SCC 643 [Shree Bhagwati Steel Rolling Mills Vs. the Commissioner of Central Excise and Another], the scope of Rules and Regulations which are in the nature of Subordinate Legislation found to be ultra vires, came up for consideration and in paragraph No.29, it is held that, ".....This Court has specifically stated that the rules or regulations which are in nature of the Subordinate Legislation which are ultra vires, are bound to be ignored by the Courts when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the Courts way of not enforcing them." In the case on hand, the Prospectus came to be issued on the basis of a Government Order and it is the contention of the learned counsel appearing for the first respondent / writ petitioner as well as the Medical Council of India that Clauses Nos.16, 17 and 33[b] totally ignore / negate / undermine the statutory provisions. In the light of the said decisions, it is not necessary on the part of the first respondent / writ petition to make a challenge to the said clauses of the Prospectus and therefore, this Court is of the view that the writ petition is maintainable.

Contention -[b]

56. It is not doubtful that the regulations framed by the Medical Council of India in exercise of powers conferred under Section 33 read with Section 20 of the Indian Medical Council Act, 1956, are held to be statutory in character and it bind all Universities and Colleges and it bind all the concerned authorities who are conducting medical courses and the said regulations are also mandatory in nature. The Hon'ble Apex Court in the decision reported in 1998 [6] SCC 131 [Medical Council of India Vs. State of Karnataka] and the decision of a Constitution Bench reported in 1999 [7] SCC 120 [Dr. Preeti Srivatsava and another v. State of M.P. and Others] held so and subsequently, in very many decisions, the said position has been reiterated. Mr.P.Wilson, learned Senior counsel appearing for the appellants in WANos.498, 499 and 537 to 546/2017 made a valiant effort that the first appellant, by virtue of the powers conferred under Article 162 of the Constitution of India, has issued a Government Order based on which, the Prospectus came to be formulated and it is having a force of law and in the event of any repugnancy between the Prospectus, which is having a statutory backing in the form of Government Order vis-a-vis the Post Graduate Medical Education Regulations, 2000, harmonious construction is to be adopted so that both provisions will co-exist and the Hon'ble Mr. Justice K.K.Sasidharan, in the judgment in the writ appeals, had done that exercise to the betterment of the in-service candidates, who are serving in hilly/remote/difficult areas and in support of his submissions,

has placed reliance upon the decision reported in 1986 [Suppl SCC 543 [Dr.Ambesh Kumar and others Vs The Principal, LLRM Medical College, Meerut and Others]]. The facts of the case would disclose that the State of Uttar Pradesh, in exercise of its executive power relating to matters referred to Entry 25 of the Concurrent List, has passed a Government Order in the absence of any law made by the State Legislature and the Hon'ble Supreme Court of India has held that the impugned order lays down the criteria or eligibility of qualification and Entry 25 confer such powers upon the State Government and merely specify an eligibility qualification for being considered for selection for admission to the Post Graduate Courses [Degree and Diploma] in the Medical Colleges in the State in accordance with the criteria laid down by the Medical Council and the same does not, in any way, encroach upon the Regulations that have been framed under the provisions of Section 33 of the Indian Medical Council Act, 1956. It is a well settled position of law that the Central Government or State Government can give administrative instructions but the same will not per se lead to the presumption that they are statutory in character. Admittedly, in the case on hand, in the field of medical education, the Medical Council of India is constituted as the sole authority to oversee it and only in the event of any gaps, the administrative instructions can be issued to fill it up.

56 [a] The Hon'ble Supreme Court of India in M.Karunanithi Vs. Union of India reported in 1979 SCR [3] 431 : AIR 1979 SC 898, has considered the issue relating to Repugnancy and observed that the Repugnancy may result in the following circumstances:-

"(i) Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

(ii) Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with cl. (2) of Art. 254.

(iii) Where a law passed by the State legislature while being substantially within the scope of the entries in the State List trenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and

large the law falls within the four corners of the State List an entrenchment, if any, being purely incidental or inconsequential.

(iv) Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with or repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Art 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and over-rule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Art. 254. [263 F-264 D]".

In the decision reported in 2007 [5] MLJ 246 [Indira Gandhi College for Women Committee, rep. by its Secretary G.Mohan, Madurai-625006 Vs. State of Tamil Nadu rep.by its Secretary, Information and Tourism Department, Chennai and others], this Court has held in paragraph No.19 as follows:-

"1. Where the provisions of a Central Act and a State Act in the concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where however, a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with Clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the state Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the president would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254."

[emphasis supplied]

This Court is of the considered view that the Government Order based on which, the Prospectus was framed/formulated cannot be equated with law or Legislation and therefore, the question of Repugnancy between the Prospectus and the statutory provisions and Subordinate Legislations in the Indian Medical Council Act, 1956, does not arise at all for consideration. Even otherwise, the Hon'ble Supreme Court of India in the decision in Sudhir's case as well as in Dinesh Singh Chauhan's case [cited supra] had given a categorical finding regarding the primacy of the Post Graduate Medical Education Regulation, 2000, more particularly, Regulation 9.

56 [b] The decision rendered by the Division Bench of Rajasthan High Court in D.B.Civil Writ Petition No.4518/2017 dated 07.04.2017 [Dr. Chandra Prakash Sharma V. State of Rajasthan through its Principal Secretary, Department of Medical and Health, Secretariat, Jaipur and others] and the decision dated 26.04.2017 in Civil Writ Petition No.7026/2017 [Rajesh Kumar and another v. State of Punjab and Others] rendered by a Division Bench of Punjab & Haryana High Court, are also in tune with the decision rendered by the Hon'ble Supreme Court in Dinesh Singh Chauhan's case [cited supra].

57. This position leads to the incidental question to Schedule No.VII List I Entry 66 in the Union List and List No.III Entry 25 in the Concurrent List of the Constitution of India and the issue came up for consideration before the Hon'ble Supreme Court of India in the decision reported in 1995 [4] SCC 104 [State of Tamil Nadu and another Vs Adhiyaman Educational and Research Institute and others], wherein, the scope of those Entries in relation to the provisions of the Tamil Nadu Private Colleges [Regulation] Act, 1976 and the Madras University Act, 1923, vis-a-vis, the All India Council for Technical Education Act, 1987 [AICTE] and in paragraph No.41 of the said judgment,

the Hon'ble Supreme Court has summed up the legal position and test applicability. In paragraph No.44[ii] of the said judgment, it has been stated that "to the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative." Further, in paragraph No.44[iii], it has observed that "if there is a conflict between two Legislations, unless the State Legislation is saved by the main part of Clause [2] of Article 254, the State Legislation being repugnant to the Central Legislation, the same would be inoperative."

58. It is the submission of Mr.P.Wilson, learned Senior Counsel appearing for the appellants in WA.No.498, 499 and 537 to 546/2017 that the Government Order, based on which, the Prospectus came to be formulated and issued, is having a force of law and the State Government under Entry 25 of the Concurrent List, is entitled to prescribe guidelines for admission of students in Post Graduate Courses. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that the Government Order containing administrative instructions, cannot be equated with the Statute and the field of medical education is already occupied in the form of the Central Legislation, viz., the Indian Medical Council of India, 1956, and various Regulations framed therein.

59. The issue was also considered in the decisions of the Hon'ble Supreme Court of India reported in 2015 (6) SCC 855 [Sudhir and Others Vs. State of Kerala and Others] and 2016 [9] SCC 749 [State of Uttar Pradesh and Others Vs. Dinesh Singh Chauhan] [both cited supra] and while dealing with the issue, Dr. Preeti Srivatsava's case reported in 1999 [7] SCC 120 [cited supra] has also been taken into consideration and it has been held that Regulation 9 of the Post Graduate Medical Education Regulations, 2000, is a complete Code by itself and any law with regard to that will be beyond legislation competent of the State Legislation.

60. In the light of the above settled decisions, this Court is of considered view that the Indian Medical Council Act, 1956, and various Regulations framed thereunder, especially, the Post Graduate Medical Education Regulation, 2000, are having primacy and therefore, the appellants in WA.No.484/2017 are bound to follow the same and the only leverage given to them is to identify the remote and difficult areas.

Contention-[c]

61. The respective learned Senior Counsels as well as the other learned counsel appearing for the appellants made a

vehement and forceful submissions by inviting the attention of this Court to the Prospectus and would submit that the State Government with a laudable and noble object, is providing incentives to the doctors who are serving in the remote / hilly / difficult areas and insofar as the present academic session also, they were hopeful that the same procedure/system will continue and all of a sudden, their ambition and dream are likely to be shattered and would further add that the State Government is having competence to prescribe guidelines in Clauses 16, 17 and 33[b] of the Prospectus.

62. Per contra, Mr.Vijay Narayan, learned Senior Counsel assisted by Mr.V.P.Raman, learned Standing counsel appearing for the Medical Council of India, has drawn the attention of this Court to the decisions rendered in Sudhir's case [2015 [6] SCC 685] and Dinesh Singh Chauhan's case [2016 [9] SCC 749] and would submit that those decisions had given a complete answer to the points urged on behalf of the appellants and invited the attention of this Court to the relevant paragraphs in the said decisions.

63. Mr.P.Wilson, learned Senior Counsel appearing for the appellants in WA.Nos.498, 499 and 536 to 547/2017 has invited the attention of this Court to some decisions including the Constitution Bench decision rendered in Dr.Preeti Srivatsava's case [1999 [7] SCC 120] and the decision rendered in State of Madhya Pradesh Vs Gopal D.Trithani reported in 2003 [7] SCC 83.

64. In Sudhir's case reported in 2015 [6] SCC 685, the writ petition was filed praying for a direction for selection of in-service Medical Officers for Post Graduate Medical Education u/s.5[4] of the Medical Officer Admission Rule, Post Graduate Courses In-Service Quota Act, 2008 [Kerala Act 29 of 2008] and the High Court had allowed the writ petition with a direction to select them strictly on the basis on inter-se seniority of the candidates who have taken the Common Entrance Test held under auspices of the Medical Council of India and it was put to challenge before the Hon'ble Apex Court. The primordial ground on which the challenge was made to the validity of the said Act was that the said Legislature could not enact a law that would make selection for admission to the Post Graduate Courses depending solely on the seniority of the in-service candidates, without prescribing minimum conditions of eligibility for the candidates and thereby, the said piece of legislation had violated the regulations framed by the Indian Medical Council Act, 1956. The in-service doctors who were arrayed as the respondents in the appeal filed before the Hon'ble Apex Court, contended that but for the provision permitting the quota for service aspirants for admission to Post Graduate Courses, it would be difficult to compete with fresh Graduates who may be academically better of than the candidates who were since long given up their studies and devoted themselves entirely to the

service of the people at large, some of them inhabiting to remote and difficult areas of the State. The Medical Council of India contended that as per the regulations, the students for Post Graduate courses can only be selected only on the basis of inter-se academic merit and any other method of selection, is therefore, by necessary application, forbidden and also took a stand that inasmuch as the State Regulation has attempted to introduce another method of selection which has the effect of subverting the Medical Council of India Regulations, the impugned Enactment was passed and of course, the Kerala High Court has agreed that the admission to the Post Graduate Courses can be made only on the basis of inter-se seniority of the candidates who appeared in the Common Entrance Examination. But, at the same time, thought fit to issue a direction for selection of in-service medical officers also. The Hon'ble Supreme Court, after taking note of Adhiyamans's case reported in 1995 [4] SCC 104i, Gopal D.Trithani's case reported in 2003 [7] SCC 83 ; Dr.Preeti Srivatsava's case reported in 1999 [7] SCC 120 and yet another two decisions, had considered the scope of Entry 66 of List I and Entry 25 of List III, had held as follows:-

".....

24.It is in the light of the above pronouncements futile to argue that the impugned legislation can hold the field even when it is in clear breach of the right in holding that inasmuch as the provisions of section 5[4] of the Impugned Enactment provides a basis for selection of candidates different from the one stipulated by the MCI Regulations it was beyond the legislative competence of the State Legislature. Having said that, the High Court adopted a reconciliatory approach when it directed that seniority of the in-service candidates will continue to play a role provided the candidates concerned have appeared in the Common Entrance Test and secured the minimum percentage of marks stipulated by the Regulations. The High Court was, in our opinion, not correct in making that declaration. That is because, even in Gopal D.Trithani case, this Court has allowed in-service candidates to be treated as a separate channel for admission to Post Graduate Course within that category also admission can be granted only on the basis of merit. A meritorious in-service candidate cannot be denied admission only because he has an eligible senior above him though lower in merit. It is now fairly well settled that merit and merit alone can be the basis of admission among candidates belonging to any given category. In-service candidates belong to one

category. Their inter se merit cannot be overlooked only to promote seniority which has no place in the scheme of the MCI Regulations. That does not mean that merit based admissions to in-service candidates, cannot take into account the service rendered by such candidates in rural areas. Weightage for such services permissible while determining the merits of the candidates in terms of the third proviso to Regulation 9 [supra]. Suffice it to say that Regulation 9 remains as the only effective and permissible basis for granting admission to in-service candidates, provisions of section 5[4] of the impugned Enactment notwithstanding. That being so, admissions can and ought to be made only on the basis of inter-se merit of the candidates determined in terms of the said principle which give no weightage to seniority simpliciter."

65. In the decision reported in 2016 [9] SCC 749 -Dinesh Singh Chauhan's case, the very scope of legality of the proviso to Clause IV of the Regulation 9 of the Post Graduate Medical Education Regulations, 2000, came up for consideration and whatever points urged herein by the respective learned counsel for the appellants were urged in the said case also. The Hon'ble Supreme Court of India has taken into consideration the decisions in Sudhir's case, Dr.Preeti Srivatsava's case and Satyabratha Sahoo Vs. State of Orissa reported in 2012 [8] SCC 203 and other decisions and has formulated the following question for determination, viz., whether the High Court exceeded its jurisdiction in setting aside the Government Order dated 28.12.2014, providing for reservation to in-service candidates, when the writ petition filed by the in-service candidates was limited to equate them with the in-service candidates who had experience of working in remote or difficult areas. The High Court of Judicature at Allahabad, in the judgment which was the subject matter of appeal before the Apex Court by placing reliance on the decision of the Apex Court, opined that it would not be permissible in law for the State Government to provide reservation for in-service candidates in Post Graduate Degree courses in violation of Regulation 9. The Hon'ble Supreme Court of India, in paragraphs No.10 and 19 of the judgment, observed that "concededly, the action taken on the basis of such a void Government Order, would be nothing short of a nullity in law." The Apex Court after extracting Regulation 9 of the Post Graduate Medical Education Regulation, 2000, in paragraphs No.27 and 29 held as follows:-

"....

27.Thus, understood, the Central enactment and the regulations framed thereunder do not provide for reservation for in-service

candidates in Post Graduate "degree" Courses. As there is no express provision prohibiting reservation to in-service candidates in respect of admission to Post Graduate "degree" courses, it was contended that providing for such reservation by the State Government is not impermissible in law. Further, there are precedents of this Court to suggest that such arrangement is permissible as a separate channel of admission for in-service candidates. This argument does not commend to us. In the first place, the decisions pressed into service have considered the provisions regarding admission process governed by the regulations in force at the relevant time. The admission process in the present case is governed by the Regulations which have come into force from Academic Year 2013-14. This Regulation is a self-contained Code. There is nothing in this Regulation to even remotely indicate that a separate channel for admission to in-service candidates must be provided, at least in respect of Post Graduate "Degree" Courses. In contradistinction, however, 50% seats are earmarked for the Post Graduate "Diploma" Courses for in-service candidates, as is discernible from Clause (VII). If the Regulation intended a similar separate channel for in-service candidates even in respect of Post Graduate "Degree" Courses, that position would have been made clear in Regulation 9 itself. In absence thereof, it must be presumed that a separate channel for in-service candidates is not permissible for admission to Post Graduate "Degree" Courses. Thus, the State Government, in law, had no authority to issue a Government Order such as dated 28th February 2014, to provide to the contrary. Hence, the High Court was fully justified in setting aside the said Government Order being contrary to the mandate of Regulation 9 of the Regulations of 2000, as applicable from Academic Year 2013-14.

.....

29. In the present case, we have held that providing 30% reservation to in-service candidates in Post Graduate "Degree" Courses is not permissible. It does not however, follow that giving weightage or incentive marks to in-service candidates for Post Graduate "Degree" Courses entails in excessive or substantial departure from the rule of merit and equality. For, Regulation 9 recognizes the principle of

giving weightage to in-service candidates while determining their merit. In that sense, incentive marks given to in-service candidates is in recognition of their service reckoned in remote and difficult areas of the State, which marks are to be added to the marks obtained by them in the NEET. Weightage or incentive marks specified in Regulation 9 are thus linked to the marks obtained by the in-service candidate in the NEET and reckon the commensurate experience and services rendered by them in notified remote/difficult areas of the State. That is a legitimate and rational basis to encourage the Medical Graduates/Doctors to offer their services and expertise in remote or difficult areas of the State for some time. Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst the young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates) is permissible differentiation whilst determining their merit. It is an objective method of determining their merit."

66. The Apex Court also taken into consideration Gopal D.Trithani's case reported in 2003 [7] SCC 83 and found that the Medical Council of India itself has framed a regulation predicating one Merit List by adding weightage marks [remote and difficult areas] assigned to in-service candidates for determining merit in NEET. The Hon'ble Supreme Court of India in the said decision also framed a crucial question in paragraph No.34 that "whether the norm specified in Regulation 9 regarding incentive marks, can be termed as excessive and unreasonable?" and held that "Regulation 9, as applicable, does not permit preparation of two Merit Lists as predicated in Trithani's case [2003 [7] SCC 83]. Regulation 9 is a complete Code. It prescribes basis for determining the eligibilities of the candidates including the method to be adopted for determining inter-se merit on the basis of one Merit List of candidates appearing in NEET including by giving commensurate weightage of marks to the in-service candidates.

67. It is also the submission of Mr.P.Wilson, learned Senior Counsel appearing for the appellants in WA.Nos.498, 499 and 537 to 546/2017 that the procedure for weightage of marks in NEET is almost impracticable and the State Government in the Prospectus has restricted the marks to a maximum of 10 and it will be advantageous to doctors who are serving in remote/difficult/hilly areas. The mode of awarding marks in NEET is also discussed in the above cited judgment in paragraph No.35 and it has been held that "this provision has been brought

into force in larger public interest and not merely to provide institutional preference or for that matter to create separate channel for in-service candidates much less reservation. It is unfathomable as to how such a provision can be said to be unreasonable or irrational." The Apex Court also distinguished Satyabrata Sahoo's case reported in 2012 [8] SCC 203 and in paragraphs No.37 and 38, held that in the said case that "the challenge of direct candidates was about allowing in-service candidates to compete for seats earmarked for direct category by giving weightage of marks. However, in the present case, there is no separate channel for two categories in respect of Post Graduate "degree" courses and Regulation 9[2] and proviso to Clause IV of Regulation 9 in force, corresponding to the third proviso to Regulation 9[2] as interpreted, is in the nature of giving additional marks as incentive to in-service candidates, commensurate with the length of service notified as remote/difficult areas in the State and also dependent on marks obtained by them in NEET". In paragraph No.39, it is observed by the Hon'ble Supreme Court of India that "..... Regulation 9 is a complete Code by itself and any law with regard to that will be beyond legislation and competence of the State Legislature" and in paragraph No.42, further observed that ".... authorities are, therefore, oblige to continue with the admission process strictly in conformity with Regulation 9". The Hon'ble Apex Court in paragraph No.4 of the above cited decision, observed that "considering the above, the inescapable conclusion is that the procedure evolved in Regulation 9 in general and proviso to Clause [IV] in particular, is just, proper and reasonable and also fulfills test of Article 14 of the Constitution of India being in larger public interest." The Apex Court having taken note of the fact that admission was already completed in respect of the academic year 2015-2016, moulded the relief and directed all concerned to follow the admission process for the academic year 2016-17 and onwards strictly in conformity with the Regulations in force governing the procedure for selection of candidates for Post Graduate Medical degree courses and including determination of relative merit of the candidates who had appeared in NEET by giving weightage of incentive marks to eligible in-service candidates."

68. In the considered opinion of the Court, the Dinesh Singh Chauhan case [cited supra], reported in 2016 [9] SCC 749, gives a complete answer to the points/grounds urged by the respective learned counsel for the appellants. It is to be noted at this juncture that the said judgment came to be delivered on 16.08.2016 and is also reported and despite the finding has been given as to the mandatory nature of Regulation 9 of Post Graduate Medical Education Regulation, 2000, the appellants in WA.No.484/2017, for the reasons best known to them and in ignorance and in violation of law laid down by the Hon'ble Supreme Court of India, had issued a Government Order, which is purely administrative in nature, based on which, issued

the Prospectus for admission of students to Post Graduate Degree and Diploma courses for the academic session 2017-18.

69. In the light of the above said attitude exhibited by the appellants in WA.No.484/2017 / respondents in WP.No.6031/2017, it is relevant to consider the decision rendered by the Apex Court reported in 2014 [1] SCC 552 [Aneesh D.Lawande and others Vs. State of Goa and others]. The facts leading to the said case would reveal among other things, that the State of Goa had framed a set of rules, viz., Goa [Rules for Admission to Post Graduate Degree and Diploma Courses of the Goa University at the Goa Medical College] Rules, 2004 and the said rules governs admission to the Medical as well as Dental Colleges-Government Colleges affiliated to Goa University. In pursuant to which, the students / candidates had also appeared in NEET held in November - December 2012 for the Medical courses as well as for the Dental courses and subsequently, results were announced and the writ petitioners who secured ranks which entitled them to be admitted to the Post Graduate Courses in various streams in the State of Goa. The High Court of Mumbai at Goa had entertained the writ petition filed by the students who have failed in NEET and passed an interim order, directing the respondents to hold Counselling in respect of both categories of students and permit admissions to students who have passed NEET subject to further orders to be passed by the Hon'ble Supreme Court. The writ petitions were transferred to the file of the Apex Court and in the interregnum, some events took place and as a result, candidates who had qualified in NEET examination and had been admitted, were compelled to leave the College and the students who were qualified under the above said rules were admitted and therefore, challenge was made before the Hon'ble Supreme Court of India by invoking Article 32 of the Constitution of India. It is relevant to extract the Preface in paragraph No.3, which reads thus:-

"3.We have begun with such a prefatory note and referred to the aforesaid pronouncements as the facts, as have been uncurtained, would shock one's conscience. A deliberate labyrinth which not only assasults the majesty, sanctity and purity of law, but also simultaneously creates a complex situation as far as possible so that there is some sanguine cathartic effect."

70. The Hon'ble Supreme Court of India noted with anguish that the State of Goa in spite of the order passed, took a decision on 25.07.2013 to cancel the provisional admission given to the students on the basis of NEET merit examination and made the following observations:-

"24.....The act indubitably shows total lack of prudence. The authorities in the Government are required to understand that the basic governance consists in the act of taking

considered, well vigilant, appropriate and legal decisions. It is the sacrosanct duty of the Government to follow the law and the pronouncements of the Court and not to take recourse to such subterfuges. The Government should have reminded itself the saying of Benjamin Disraeli:-

"I repeat - that all power is a trust - that we are accountable for its exercise - that, from the people and for the people, all springs, and all must exist."

25. It may not be out of place to state here that every public authority has a duty coupled with power. Before exercising the power one is required to understand the object of such power and the conditions in which the same is to be exercised. Similarly, when one performs public duty he has to remain alive to the legal position and not be oblivious of it. In this context, we may refer to the authority in *Superintending Engineer, Public Health, U.T. Chandigarh and others v. Kuldeep Singh and others*[5] wherein the Court has reproduced the observations of Lord Cairns L.C. in the House of Lords in *Julius v. Lord Bishop of Oxford*[6] which was quoted with approval by this Court in *Commissioner of Police, Bombay v. Gordhandas Bhanji*[7]. The succinctly stated passage reads thus: -

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

But, unfortunately, here the authorities of the State Government have felt courageous enough to play possum and proceeded to crucify the fate of the candidates who had been protected by the verdict of this Court. Such an action is absolutely impermissible. Thus analysed the letter dated 25.7.2013 deserves to be lanced and we so do. The writ petitioners, who have

been admitted on the basis of the NEET examination, shall be allowed to prosecute their studies."

[Emphasis Supplied]

71. As rightly pointed out by Mr.Vijay Narayan, learned Senior Counsel assisted by Mr.V.P.Raman, learned Standing counsel appearing for MCI, despite repeated pronouncements made by the Hon'ble Supreme Court of India as to the primacy of the Medical Council of India in respect of medical education, some of the State Governments had chose to ignore the same and framed their own guidelines in total contravention and violation of the mandatory statutory regulations framed under the Indian Medical Council Act, 1956 and issuance of the Government Order and the formulation of the Prospectus by the third appellant in WA.No.484/2017 is one such instance.

72. The appellants are expected to abide by the statutory rules and regulations and are bound by the orders passed by the Apex Court which is the law declared under under Article 141 of the Constitution of India and for the best of reasons, had ignored it and also seek to justify their stand on the ground of sentiments and sympathy and for the present piquant situation, they are alone to be blamed.

Contention-[d]

73. The Hon'ble Mr. Justice S.M.Subramaniam had taken note of various decisions of the Hon'ble Supreme Court of India, especially, the decision reported in 2015 [6] SCC 685 [Sudhir's case] and the decision reported in 2016 [9] SCC 749 [Dinesh Singh Chauhan's case] and had held that Clause Nos.16, 17 and 33[b] of the Prospectus are declared inconsistent / repugnant to Regulation 9 of the Post Graduate Medical Education Regulations, 2000. Though the learned Judge in paragraph No.68 of the order observed that in-service candidates are bound to get the benefit of the incentive marks, it is to be observed that the term "in-service candidates" is referable to the candidates who are serving in remote/hilly/difficult areas as per the proviso to Regulation 9[IV]. This Court, in the earlier paragraphs had pointed out that the first appellant thought fit to define the words "hill/remote/difficult areas" and the identification of the place as well as the non-inclusion of the medical officers serving in rural areas which is the subject matter of challenge in WA.Nos.506 & 527/2017 and felt that counter affidavit is to be filed by the State Government justifying the identification of the areas. Insofar as rural areas is concerned, this Court had taken note of the fair submission made by Mr.T.N.Rajagopalan, learned Special Government Pleader on instructions that the doctors who are serving in Primary Health Centres in Rural areas, will be considered under the category and strictly in accordance with the Prospectus insofar as

defining and identification of the said areas are concerned. The said submission is placed on record.

74. It is to be noted at this juncture that the crucial date expires on 07.05.2017 and in the event of holding that the said identification is not in consonance with the said proviso, it may create hardships to the successful candidates who had cleared NEET and even otherwise, the proviso gives discretion to the State Government / competent authority to define remote and difficult areas and to that extent, the said identification for the academic session 2017-2018, warrants no interference.

75. The result of the above said discussions / findings is that the appellants are bound to strictly follow and implement Regulation 9 and more particularly, Regulation 9[IV] and proviso therein and ensure full compliance.

76. This Court, on an exhaustive analysis and thorough consideration and appreciation of the materials placed before it and also on independent application of mind, is of the considered opinion that the directions given in the judgment dated 03.05.2017 of the Hon'ble Mr. Justice S.M.Subramaniam, are in consonance with the settled legal position except with regard to identification of hilly and remote/difficult areas for the reasons assigned in paragraph No.74.

77. In the result, W.A.Nos.453, 484, 490, 491, 498, 499, 536 and 537 to 546 of 2017 are dismissed and the directions issued / moulded reliefs granted by the Hon'ble Mr. Justice S.M.SUBRAMANIAM, in paragraph No.71 of the common Judgment dated 03.05.2017, except with regard to identification of hilly and remote / difficult areas done by the appellants in WA.No.484/2017 in terms of proviso to Regulation 9[IV] of the Post Graduate Medical Education Regulations, 2000; are to be implemented forthwith. W.A.Nos.506 and 527 of 2017 are de-linked. No costs. Consequently, the connected miscellaneous petitions are also dismissed. No costs.

78. This Court place it on record, the valuable assistance rendered by the respective Senior Advocates and Counsels appearing for the parties, enabling it to give this verdict at the shortest possible time.

06.05.2017

Sd/-
Assistant Registrar(CCC)
Dated : 08.05.2017

//True Copy//

Sub Assistant Registrar

AP/JVM

To

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai-9.
2. The Director,
Directorate of Medical Education,
162, EVR Periyar Salai, Kilpauk,
Chennai-600 010.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar Salai, Kilpauk,
Chennai-600 010.
4. The Secretary to Government,
Health and Family Welfare Department,
St. George Fort, Chennai.
5. The Secretary,
The Medical Council of India,
Pocket -14, Sector-8,
Dwarka Phase-I,
New Delhi-110 077.

+2cc's to Mr.L.Chandrakumar, Advocate, S.R.Nos.36754 & 36634

+1cc to Mr.R.N.Amarnath, Advocate, S.R.No.36649

+2cc's to Mr.K.V.Sanjeev Kumar, Advocate, S.R.No.36641

+1cc to Mr.G.Sankaran, Advocate, S.R.No.36648

+1cc to Mr.G.Justin, Advocate, S.R.No.36633

+1cc to Mr.N.Surya Senthil, Advocate, S.R.No.36640

+2cc's to Mr.V.P.Raman, Advocate, S.R.Nos.36652 & 36744

+4cc's to Mr.K.P.Narayanan, Advocate, S.R.Nos.36635 & 36742

+2cc's to Mr.P.Godson Swaminath, Advocate, S.R.Nos.36654 & 36757

+1cc to the Government Pleader, S.R.No.36731

WEB COPY W.A.Nos.453, 484, 490, 491,
498, 499, 506, 527, 536
and 537 to 546 of 2017

SR & NRI (CO)
CA(09/05/2017)